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## CITIZEN ENGAGEMENT IN THE SHRINKING CITY: TOWARD DEVELOPMENT JUSTICE IN AN ERA OF GROWING INEQUALITY

BARBARA L. BEZDEK\*

Sherry Arnstein, writing in 1969 about citizen involvement in planning processes in the United States, at the height of American racial and economic tensions, described a typology of citizen participation arranged as a ladder with increasing degrees of decision-making clout ranging from low to high.<sup>1</sup> The Arnstein rungs ascend from forms of “window-dressing participation,” through cursory information exchange, to the highest levels of partnership in or control of decision-making.<sup>2</sup> Arnstein’s Ladder has remained the touchstone in assessing the meaning, or lack thereof, in public participation in local government decision-making that allocates scarce development dollars, because it succinctly juxtaposes powerless citizens with power-holders. It resonates with swaths of “the public”: residents of city neighborhoods who find their needs discounted in the development calculus.

Americans are trying to engage their governments. In May 2013, the latest Pew Research Center report on civic engagement revealed that in some quarters, Americans’ participation in public life is at an all-time high.<sup>3</sup> While online forms of political participation have grown in prominence,<sup>4</sup> half of all American adults take part in some civic activity, from attending town meetings

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1. Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. PLANNING ASS’N 216, 217 (1969).

2. *Id.*

3. AARON SMITH, PEW INTERNET AND AM. LIFE PROJECT, CIVIC ENGAGEMENT IN THE DIGITAL AGE 2 (2013), available at [http://pewinternet.org/~media/Files/Reports/2013/PIP\\_CivicEngagementintheDigitalAge.pdf](http://pewinternet.org/~media/Files/Reports/2013/PIP_CivicEngagementintheDigitalAge.pdf).

4. The level of people’s political participation online in 2012 has increased since 2008, with 72 percent of all Americans participating in at least one activity, such as posting links to political stories or following elected officials, according to the latest Pew Research Center report on civic engagement. Jenny Xie, *Pew: Online Political Activism Grows, but ‘Slacktivism’ Problem Remains*, PBS (May 14, 2013), <http://www.pbs.org/mediashift/2013/05/pew-online-political-activity-is-growing-but-slacktivism-and-class-related-gaps-loom/>. Although class-related gaps in political participation are milder online than offline, the divide still persists.

to joining an organized protest—and Americans mostly conduct their political conversations offline.<sup>5</sup> Robert Putnam, author of *Making Democracy Work* and *Bowling Alone*, is perhaps best known for warning that ‘civil engagement’ has been declining sharply, eroding community connections, the bonds of trust, and social capital that invigorate community life.<sup>6</sup> Nonetheless, new practices are emerging to deepen the engagement between community residents with all levels of government. The scholarship of citizen engagement broadly distinguishes between civic engagement, on one hand, and political engagement, on the other. The distinctions can be blurry, however, since both are important in the public life of local communities.<sup>7</sup>

But one thing has not changed: people with lower wealth, lower incomes and lower education levels continue to be less politically engaged — both online and off — than those who are more affluent and hold college or graduate degrees.<sup>8</sup> This is a matter of public concern and policy import in the administration of urban redevelopment law.

Others in this symposium have addressed the question: *Why* save cities? Some have shared insights into *how* to save cities. Symposium speakers, civic leaders, and several think tanks are reporting on what’s good, what works, celebrating successes, and lifting them up for possible replication. There remains, an under-examined side of the prism for assessing the quality of ideas for saving cities: What is a city aiming to do when it approves or subsidizes redevelopment projects? Whose reality counts?

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5. The survey found that about half of American adults (48%) took part directly in a civic activity or group in the year preceding August 2012; 35% of American adults had recently worked with fellow citizens to solve a problem in their community; 22% attended a political meeting on local, town, or school affairs; 13% had been an active member of a group that tries to influence the public or government; 10% attended a political rally or speech; 7% worked or volunteered for a political party or candidate; and 6% attended an organized protest. SMITH, *supra* note 3, at 2–3.

6. See generally ROBERT D. PUTNAM ET AL., *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (1993); *But see* ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

7. Participation in civic life is characterized by voluntary work focused on working to solve community problems, helping others, or getting along. Examples are working in a community improvement project or participating in a fundraising walk/run. Political engagement is directly aimed at affecting the electoral process or policy formation. Rebecca Jacobsen & Tamara Wilder Linkow, *The Engaged Citizen Index: Examining the Racial and Ethnic Civic and Political Engagement Gaps of Young Adults 6–7* (Ctr. for Info. and Research on Civic Learning and Engagement, Working Paper No. 74, 2012).

8. *Id.* at 5 (observing that the gap between young adult participation rates by race and ethnicity “is a direct result of inequality” that “does not suddenly emerge in young adults” but begins in childhood, reflecting the persistent segregative effects of the distributions of financial, social and political capital).

Presumably, it is to bring back life: to restore vitality. For rust-belt cities that have hemorrhaged people, industry and commerce, the logical and often-stated goals are to regain a healthier mix of people and viable community life, including exchanges of trade, labor, and sociability.<sup>9</sup> Yet the dominant city strategies for urban revival which have held sway for decades have proven unduly narrow as a theory of “revitalization.”<sup>10</sup> For example, chasing smokestack industries, sports stadia, or casinos, yield limited success in terms of public revenue gains, and in terms of local employment or community boost.<sup>11</sup> Targeting central business districts, at the cost of disinvesting in neighborhoods, leaves residential areas subject to neglect and decline.<sup>12</sup> Dealing with neighborhoods, or public housing communities, as sites to be cleared, redesigned and rebuilt for middle- and upper-class in-movers has reinforced for residents the belief that their interests do not register with government decision-makers.<sup>13</sup> The legal framework for meaningful

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9. See JENNIFER S. VEY, BROOKINGS INST. METRO. POL’Y PROGRAM, RESTORING PROSPERITY: THE STATE ROLE IN REVITALIZING AMERICA’S OLDER INDUSTRIAL CITIES 10 (2007), available at [http://www.brookings.edu/metro/pubs/20070520\\_oic.pdf](http://www.brookings.edu/metro/pubs/20070520_oic.pdf) (defining “older industrial cities” as “communities that over the past several decades have experienced the steady loss of businesses and jobs, and whose role in the economy, and the economic stability of their residents, has diminished as a result.”); Emily A. Green, *The Rustbelt and the Revitalization of Detroit: A Commentary and Criticism of Michigan Brownfield Legislation*, 5 J.L. Soc’y 571, 614 (2004); Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty and America’s Eroding Industrial Base*, 81 Geo. L.J. 1757, 1881–82 (1993); See generally Yoonsoo Lee, Fed. Reserve Bank of Cleveland, Geographic Redistribution of the U.S. Manufacturing And the Role of State Development Policy (2006) (discussing state development incentive programs to influence plant relocations), available at [http://ciser.cornell.edu/NYCRDC/documents/Lee\\_Relocation\\_NYCRDC.pdf](http://ciser.cornell.edu/NYCRDC/documents/Lee_Relocation_NYCRDC.pdf). See also James Brooks, *Strategies for Transforming the “Rust Belt,”* Nat’l League Of Cities Blog (July 8, 2013) <http://cityspeak.org/2013/07/08/strategies-for-transforming-the-rust-belt/>; John Gallagher, *Rust Belt cities look to Old World for new growth ideas*, L.A. Times, Jan. 3, 2011, <http://articles.latimes.com/2011/jan/03/business/la-fi-europe-rebuild-20110103> (discussing Cities in Transition exchange program).

10. Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 691–92 (1994). See also Lee, *supra* note 9.

11. Quinones, *supra* note 10, at 691–92 (discussing the failure of redevelopment policies in Los Angeles to arrest blight or improve the life chances of inner city residents); David L. Markell, *Understanding Citizen Perspectives on Government Decision Making Processes as a Way to Improve the Administrative State*, 36 ENVTL. L. 651, 679 (2006), available at <http://law.lclark.edu/live/files/262-363markell>.

12. See, e.g., Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1069 (1996) (discussing Urban Renewal as a means to build attractive central business districts through the destruction of nearby residential neighborhoods populated by African Americans or working-class or lower-middle-class whites); Robert D. Bullard, *The Legacy of American Apartheid and Environmental Racism*, 9 ST. JOHNS’S J. LEGAL COMMENT.. 445, 445 (1994) (discussing Atlanta).

13. Frug, *supra* note 12, at 1073.

community engagement processes is overdue for a twenty-first century overhaul.

Flourishing experiments in new forms of citizen engagement and deliberative democracy show promise for local resident participation with local officials in making decisions of consequence that impact all community members. “Deliberative democracy,” “participatory governance,” citizen advisory and citizen jury methods, issues forums, study circles, and planning cells illustrate significant public interest in the matters being decided by government officials and provide more robust forms for people to weigh in than the outmoded public-hearing practices used by innumerable housing and development agencies.<sup>14</sup> These offer real opportunities for meaningful public engagement and inclusion of the people most often overlooked, unrepresented, and left out.<sup>15</sup>

Which brings us back to the heart of the matter. What are the aims of the revitalization conducted by local officials: for which social goods? Good for whom? What are the measures and methods by which to assess the outputs planned for, when a city gives approvals or subsidies for revitalization projects? By what means can the city’s people understand and influence the tradeoffs made by their government in the redevelopment of city blocks already occupied by residents. This is more than a matter of development finance or physical redevelopment. It is a question of social justice, of whose reality counts in the legal process utilized to reach development decisions and approve significant public subsidy for the projects that are remaking American cities.

The paper proceeds as follows. In Part I, the paper distinguishes between the general notion of citizen engagement, and the more precise field of the public interests justifying participation in local government development decision-making. Part II relates parameters of engagement and participation to the stakes for citizens of disinvested neighborhoods. Its purpose is to illumine that set of ideas through the practices of citizen engagement used in two redevelopments, occurring contemporaneously in opposite corners of Baltimore—one of America’s once-great manufacturing cities, now shrinking in population and wealth.

Part III examines the burgeoning field of community engagement practices and process models; and considers their utility to enhance the critically important but often missing dimension: public participation of traditionally under-included poor and minority people—particularly in redevelopment decisions. Chief among the fundamental principles prescribed for effective participatory practices are: *access to information*, *accountability*, *transparency*, and *inclusiveness*. By and large, citizen engagement service providers do not

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14. See *infra* notes 166–211 and accompanying text.

15. See *infra* notes 166–211 and accompanying text.

attend to that core of Arnstein's analysis with the greatest staying power: social and political power imbalances. Part IV then preliminarily restates and revises the Arnstein ladder, proposing additional functional and legal dimensions.

Part V argues that enhanced public participation rules are necessary and feasible in local government-level decisions to provide public support for urban economic redevelopment projects. Typically the city and developer justify public supports on grounds of increased prosperity in the form of jobs, wages and rising tax base. Present minimalist participation procedures are insufficient to redirect a discernible share of promised benefits and public goods to under-served residents. Failure to do so is to perpetuate structures of inequality and a cruel economic caste system. Conditions in the poorest parts of U.S. cities compel us to formulate principles of Development Justice. This Part suggests five dimensions of the social justice requisites of just development: well-being, equity, capability, livelihood, and sustainability.

## I. CITIZEN ENGAGEMENT IN THE REDEVELOPMENT OF U.S. CITIES

### A. *What Do We Want? Distinguishing Citizen Engagement and Public Participation*

To begin, it is important to distinguish among broad concepts of public engagement that pertain to a project of Saving Cities. Terms like "civic participation," "public participation," and "citizen engagement" are used colloquially to include a wide range of activities, from voting to joining a local bowling team. Citizen engagement is one in a family of democratic reform ideas that include public participation, public involvement, participatory democracy, deliberative democracy, and collaborative governance; and online siblings such as e-democracy, e-government, and electronic governance.<sup>16</sup> Interest in "civic engagement" is expressed with tremendous variety, often extolled for its importance in building community, aiding to combat the depersonalization of rapidly changing social conditions, and offering individuals space to have some control over their lives.<sup>17</sup> Civic engagement is evident across the United States and the globe, and in the United Kingdom, Australia, and Canada, new policy frameworks "place information, consultation and participation at the center" of emerging administrative

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16. CAROLYN J. LUKENSMEYER & LARS HASSELBLAD TORRES, PUBLIC DELIBERATION: A MANAGER'S GUIDE TO CITIZEN ENGAGEMENT 9 (2006), available at [http://www.whitehouse.gov/files/documents/ostp/opengov\\_inbox/ibmpubdelib.pdf](http://www.whitehouse.gov/files/documents/ostp/opengov_inbox/ibmpubdelib.pdf).

17. See, e.g., NAT'L CMTY. BLDG. NETWORK, <http://www.ncbn.org> (last visited Mar. 5, 2014); COLLABORATIVE COMMUNITIES, <http://www.collaborativecommunities.org> (last visited Mar. 5, 2014).

practices<sup>18</sup> including urban regeneration. Emphasis on the importance of engagement is evident in the work of Putnam, in the programs of a number of national and international philanthropies,<sup>19</sup> and in the Tea Party and Occupy movements.

Putnam, in his famous book *Bowling Alone*, details a dramatic decline in civic engagement in American communities, illustrated by the diminished activity in social networks such as church, sports clubs, or political organizations.<sup>20</sup> Putnam's normative argument is importantly linked to the quality of democracy, because citizen engagement through social networks allows individuals to express their interests and demands on government. Engagement spaces are necessary to achieve greater democratic inclusion, because they allow "individual and quiet voices" to be heard.<sup>21</sup> In Rust Belt cities, people are making new spaces, organizing online and in person, for example to "inspire a new generation of leaders to take responsibility for our great region's revitalization,"<sup>22</sup> "to integrate all parties,"<sup>23</sup> to bring together neighbors, researchers, planners, developers, lenders, public officials and others who are "passionate about rebuilding and sustaining healthy, vibrant and sustainable communities."<sup>24</sup>

*Public participation* is the broad principal that those who are affected by a decision have some sort of right to be involved in the decision-making.<sup>25</sup> This political principle may be articulated as a right of the public to participate, in

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18. LUKENSMAYER & TORRES, *supra* note 16, at 11.

19. See, e.g., *Our Focus*, CHARLES KETTERING FOUND., <http://kettering.org/who-we-are/our-focus/> (last visited Mar. 5, 2014) (supporting research and programs concerning democratic practices by citizens, institutions and communities); *About the Foundation*, KNIGHT FOUND., <http://www.knightfoundation.org/about/> (last visited Nov. 11, 2013) (encouraging "innovative approaches to increasing engagement skills in the community development field"); *Citizen Engagement Laboratory*, FORD FOUND., <http://www.fordfoundation.org/grants/grantdetails?grantid=118127> (last visited Mar. 5, 2014) (established a Citizen Engagement Laboratory for the incubation of projects to build the capacity of under-organized communities "to engage on" the social justice issues that matter to them).

20. BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY, *supra* note 6, at 16–24.

21. *Id.* at 338–40.

22. See, e.g., *Our Vision*, SAVING CITIES, <http://www.savingcities.com/home/about-us/our-vision/> (last visited Mar. 5, 2014).

23. *Id.*

24. Pitt. Cmty. Reinvestment Group, *Third Annual Community Development Summit* (2013), <http://www.pcr.org/programs/cdsummit/conference1/> (last visited Nov. 11, 2013).

25. See INT'L ASS'N FOR PUB. PARTICIPATION, CORE VALUES FOR THE PRACTICE OF PUBLIC PARTICIPATION (2007) [hereinafter IAP2], available at <http://www.iap2.org/associations/4748/files/CoreValues.pdf>.

which “public participation” implies that the public’s contribution will influence the decision.<sup>26</sup>

Public participation is widely understood as an essential fiber in the fabric of democracy, because it is vital to democratic governance. Putnam, a political scientist, is joined by participatory democrats who believe that participation is vital to democracy—a view that goes back to Rousseau.<sup>27</sup> Modern theorists observe that our democratic political institutions have been undermined by the alienation of citizens and cynicism about voting.<sup>28</sup> This is a problem of grave public import because participation serves at least three important functions in democracy. To democracy theorists, participation has an educative function: citizens are likely to gain greater skill and competence as they participate in public decision-making.<sup>29</sup> A second function is integrative, in that participation contributes to citizens’ feeling of being part of the community.<sup>30</sup> A third function is building greater legitimacy and acceptance of decisions made through a participatory process.<sup>31</sup>

Deliberative democracy proponents argue in addition that deliberation is the central feature of democratic decision-making, rather than post hoc voting.<sup>32</sup> The essence of decisional legitimacy is the opportunity for those affected by a collective decision to deliberate in the production of that decision.<sup>33</sup> Deliberation involves the discussion of problems and proposed solutions to problems, in which participants justify their preferences to one another and show themselves willing to modify their preferences, under conditions of public reasoning, mutual respect, equality, and inclusion of differing interests.<sup>34</sup>

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26. JOHN RAWLS, *A THEORY OF JUSTICE* 221 (1971) (As a leading intellectual figure, Rawls emphasized this foundational principal in political philosophy, asserting the equal right of all citizens “to take part in, and to determine the outcome of” the processes that determine the laws with which they are supposed to comply). See IAP2, *supra* note 25. LUKENSMEYER & TORRES, *supra* note 16.

27. Ank Michels & Laurens DeGraaf, *Examining Citizen Participation: Local Participatory Policy Making and Democracy*, 36 *LOC. GOV’T STUD.* 477, 479 (2010).

28. See, e.g., BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 272 (1984).

29. For example, participants in voluntary associations can learn skills such as how to speak in public and run a meeting, and hone civic virtues such as trustworthiness and reciprocity. Michels & DeGraaf, *supra* note 27, at 480.

30. *Id.*

31. *Id.*

32. *Id.*

33. See *id.*

34. Michels & DeGraaf, *supra* note 27, at 480–85 (presenting two case studies of citizen participation in policy making at the neighborhood level, in which local governments involved citizens and community stakeholders at an early stage of the decision-making process, rather than immediately before the implementation phase).



It is useful and important to distinguish between “citizen engagement” and “public participation” in the academic and practitioner literature in the context of publicly supported urban redevelopment. Federal community development and other public-welfare grant programs have provided such rights of participation since their inception in the 1960s.<sup>35</sup> The principle is more strongly reflected in environmental laws, wherein by requiring environmental impact assessment and granting the public more and more robust rights and means to participate allows members of the public to exercise their right to participate in environmental decision-making.<sup>36</sup> To advance justice in urban redevelopment, it is essential to reinvigorate the atrophied practices of public participation in development, so that local residents’ concerns are also reflected in the development decisions being made by government and industry. Calls for more deeply democratic, inclusively participatory, and meaningful engagement in redevelopment can be answered with functional reasons, as well as philosophical. These are: (1) providing important legal procedural protections for residents of distressed neighborhoods; (2) legitimizing redevelopment decisions and their attendant public approvals and incentives, in the eyes of the public and the judiciary; and (3) providing an opportunity for the residents of the impacted area to share in the benefit from the redevelopment.<sup>37</sup>

#### *B. Public Participation in Urban Redevelopment: A Brief History*

The majority of redevelopment decisions occur at the local government level, where public participation has focused on the allocation of resources for conflicting needs and wants by competing interests, chiefly regarding infrastructure and basic services.<sup>38</sup>

The vast number and diversity of jurisdictions across the U.S. should be expected to yield a rich array of effective citizen engagement methods, affording public officials and citizens to learn from counterparts elsewhere. Citizens and officials occupy specific and distinct political communities, with

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35. See discussion *infra* Part I.B.

36. Since the first formally established with the practice of environmental impact assessment (EIA) in the United States’ National Environmental Policy Act in 1969, public engagement in environmental impact assessment has spread rapidly and has been codified by a majority of nations throughout the world. Jesse L. Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China’s Environmental Impact Assessment Process: Comparing China’s EIA Law and U.S. NEPA*, 8 VT. J. ENVTL. L. 281, 287 (2007).

37. Damon Y. Smith, *Participatory Planning and Procedural Protections: The Case for Deeper Public Participation in Urban Redevelopment*, 29 ST. LOUIS U. PUB. L. REV. 243, 246 (2009).

38. See generally Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”:* *Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA. L. REV. 37 (2006).

dynamics, brewed from histories, alliances, allegiances, and memories.<sup>39</sup> Local context is not likely to be completely elided by methods of engagement adapted from elsewhere or managed by an emerging throng of civic engagement consultants.

Although development is profoundly decentralized in the United States, local decision-making as to community development and municipal services has been strongly patterned by the federal laws governing federal grants allocation since the New Deal. The legal legacy of federal public participation requirements in urban grant program cities is mired in racial, economic and party conflicts, and the rules on the books are even less suitable today to the demands of a rising citizenry demanding greater transparency and equity from local political leaders. The good news for citizens is that, local government officials need not treat federal requirements as the ceiling for public participation, when it is instead, just the floor.

The federal War on Poverty programs, established by the Economic Opportunity Act of 1964, encouraged “maximum feasible participation of the poor” in decisions that would affect their neighborhoods.<sup>40</sup> The link to participation in the material fruits of democracy was explicit at the outset: President Lyndon Johnson called for a Nationwide War on the Courses of Poverty to “strike away the barriers to the participation in our society.”<sup>41</sup> Two initiatives to implement this mandate were the Community Action Program and “community action agencies” to facilitate citizen involvement in service delivery and redevelopment projects.<sup>42</sup> The purpose of each was to structure

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39. Consuelo Cruz, *Identity and Persuasion: How Nations Remember Their Pasts and Make Their Futures*, 52 *WORLD POL.* 275, 275–79 (2000).

40. Title II of the Act, which became the basis for the community action programs, stated in Section 202 (a) (3) that local Community Action Agencies must be “developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served.” Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 202(a)(3), 78 Stat. 508, 516 (1964); For a brief yet cogent history of the legislation, see George Adler, *Community Action and Maximum Feasible Participation: An Opportunity Lost but Not Forgotten for Expanding Democracy at Home*, 8 *NOTRE DAME J.L. ETHICS & PUB. POL’Y* 547 (1994).

41. President’s Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty, 1 *PUB. PAPERS* 375, 379–80 (Mar. 16, 1964) [hereinafter President’s Special Message]. President Johnson declared, “The war on poverty is not a struggle simply to support people, to make them dependent on the generosity of others. It is a struggle to give people a chance. . . . an effort to allow them to develop and use their capacities, as we have been allowed to develop and use ours, so that they can share, as others share, in the promise of this nation.” *Id.* at 376. See also Tara J. Melish, *Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty*, 13 *YALE HUM. RTS. & DEV. L.J.* 1 (2010).

42. President’s Special Message, *supra* note 41, at 378.

new opportunities for habitually disenfranchised citizens to participate in local government decision-making.<sup>43</sup>

In testimony before Congress urging passage of the Act, Attorney General Robert F. Kennedy explained the requirement of “maximum feasible participation” this way:

The institutions which affect the poor—education, welfare, recreation, business, labor— are huge, complex structures, operating far outside their control. They plan programs for the poor, not with them. Part of the sense of helplessness and futility comes from the feeling of powerlessness to affect the operation of these organizations.

The community action programs must basically change these organizations by building into the program real representation for the poor. This bill calls for, ‘maximum feasible participation of residents.’ This means the involvement of the poor in planning and implementing programs; giving them a real voice in their institutions.<sup>44</sup>

Sargent Shriver, director of the Office of Economic Opportunity, said in 1966 that, in making the commitment to maximum feasible participation, “the poverty program staked its existence on that same ideal upon which our nation gambled from the outset: Democracy.”<sup>45</sup>

Experiments in neighborhood collaborative planning sought to engage a wider range of the public than was customarily achieved through city-sponsored staff-led planning practices.<sup>46</sup> In the decades following the Great Society programs of the Johnson era, much of the federal government regulatory operation was revamped, as political theories favoring devolution of program design and privatization reformulated the operations of the federal government via local governments.<sup>47</sup> The Community Development Block

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43. Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 *BROOK. L. REV.* 861, 872–77 (2001) (explaining that, in the absence of legislative history on the aims of the provision, a good part of Community Action’s focus became participation itself, with the result that hundreds of independent local organizations, aka community action agencies, were created to coordinate a variety of service programs including neighborhood services, education, health, manpower, housing, social services, and economic development). *See also* Wendy A. Bach, *Mobilization and Poverty Law: Searching for Participatory Democracy Amid the Ashes of the War on Poverty*, 20 *VA. J. SOC. POL’Y & L.* 96 (2012).

44. Economic Opportunity Act of 1964: Hearings Before the Subcomm. on the War on Poverty Program of the *H. Comm. on Education and Labor*, 88th Cong., 2nd Sess., pt. 1, 305 (1964) (statement of Robert F. Kennedy, Att’y Gen. of the United States).

45. Bach, *supra* note 43, at 99 (citing Office of Econ. Opportunity, Exec. Office of The President, Community Action Program Memo No. 49, at 2 (1966)).

46. *See* Peter W. Salsich, Jr., *Grassroots Consensus Building and Collaborative Planning*, 3 *WASH. U. J.L. & POL’Y* 709 (2000).

47. 42 U.S.C. §§ 5301–5306 (1976); The block grant model is used to distribute funds to recipient governments under a statutory formula intended to target communities where the aid is

Grant (CDBG) program, created by the 1974 Housing and Community Development Act, replaced several categorical grant-in-aid programs including Urban Renewal and Model Cities. CDBG was designed to replace federal prior approval of detailed plans with maximal local autonomy in setting priorities for eligible projects and expenditures in accord with local conditions, provided the expenditures qualified as benefiting low-income people or to prevent or eliminate slums or blight. Each local government that receives federal community development funds must develop a “citizen participation program” encompassing general requirements of notice and public hearing.<sup>48</sup> In 1987, the citizen participation requirement was strengthened by requiring jurisdictions to prepare a citizen participation plan as a condition of funding.<sup>49</sup>

In the four decades since the CDBG program was established, devolution has restructured the federal-state relationship, and in the same period, governmental resources for low-income communities have shrunk dramatically.<sup>50</sup>

The signature urban redevelopment program of the Clinton administration was the Empowerment Zone (EZ) program, begun in 1994.<sup>51</sup> Like its predecessors in the Johnson administration thirty years before, the EZ program facilitated collaborations between local government, businesses and communities, emphasizing business development and job creation in targeted areas of need.<sup>52</sup> The EZ program directly funded locally designed initiatives, and required community participation in planning as a condition of federal

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most needed, and Congress has established block grant programs in the fields of public health and criminal justice (1960s), workforce and job training (1973), community development (1974), and social services (1974). U.S. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, CATEGORICAL GRANTS: THEIR ROLE AND DESIGN 5, 27–32 (1978) (distinguishing block grants within a typology of federal grants).

48. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 104(a)(2), 88 Stat. 633, 638 (1974).

49. Housing and Community Development Act § 104(a)(3); Consolidated Submissions for Community Planning and Development Programs, 24 C.F.R. § 91.105 (1995).

50. JAMES A. KUSHNER ET AL., HOUSING AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS 467 (4th ed. 2011). As a consequence, states and their political subdivisions determine the priorities for spending diminishing federal funds for housing and community services, Low Income Housing Tax Credits, social services, workforce development, childcare, and assistance to needy families. Significant cuts in the built environment for low-income communities include the elimination of Project based Section 8 in 1983, and the enactment of the HOPE VI program which subsidizes the demolition of public housing and disperses residents. *Id.* at 466–68.

51. Audrey G. McFarlane, *Empowerment Zones: Urban Revitalization Through Collaborative Enterprise*, 5 J. Affordable House & Cmty. Dev. L. 35, 36–38 (1995).

52. MARILYN GITTELL, THE HOWARD SAMUELS STATE MGMT. & POLICY CTR., EMPOWERMENT ZONES: AN OPPORTUNITY MISSED: A SIX-CITY COMPARATIVE STUDY 11–12, 17 (2001).

designation.<sup>53</sup> The U.S. Department of Housing and Urban Development (HUD) guidance required that “residents must also play an active role in implementing and monitoring their plan for revitalization through governance structures that provide them with a real voice in decision-making.”<sup>54</sup> Cities applying for EZ designation were evaluated on the degree of community engagement in planning and application.<sup>55</sup> The EZ initiative was the first federal program since the Johnson administration to explicitly require resident participation.<sup>56</sup>

Comprehensive studies across the EZ cities show that, although the federal government ensured a role for participation by residents and community groups in program planning, it did not require that participatory role to continue throughout implementation.<sup>57</sup> The six original EZ cities experimented to varying degrees with participatory EZ governance structures. Philadelphia created a decentralized system comprised of three community trust boards.<sup>58</sup> Baltimore, Detroit, and Chicago each deployed a central governing board in combination with localized clusters of communities.<sup>59</sup> Atlanta and Baltimore both created a broadly representative citizen advisory board to oversee all the actions of the EZ.<sup>60</sup> The citizen engagement results were mixed. The report concluded that,

[Community based organizations] struggled for access to the elites who controlled the EZs. Constantly evident was the conflict between local activists and city officials and bureaucrats who defended their turf to the exclusion of any change in process or participants. Professionals challenged any new roles for local citizens, especially the poor, for control of the programs in their communities. Even though the EZ program was specifically designed to support the participation of local groups that process was enforced only in the initial planning phase of the program....In all of the EZ cities party politics and city bureaucratic processes and regimes severely impeded implementation of the EZ programs.<sup>61</sup>

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53. *Id.* at 27.

54. *Key Principles*, U.S. DEP'T OF HOUS. AND URB. DEV., <http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/about/keyprincipals.cfm> (last visited Mar. 5, 2014).

55. GITTELL, *supra* note 52, at 108–09.

56. See Hayling Price, *A Seat at the Table: Place-Based Urban Policy and Community Engagement*, 17 HARV. J. AFR. AM. PUB. POL'Y 65, 67 (2011).

57. GITTELL, *supra* note 52, at 17. HUD required that “residents must be involved in identifying the Strategic Vision for Change, developing specific goals, and crafting solutions. Residents must also play an active role in implementing and monitoring their plan for revitalization through governance structures that provide them with a real voice in decision making.” *Id.* at 7 (quoting HUD about the EZ/EC initiative).

58. *Id.* at 50.

59. *Id.* at 93.

60. *Id.* at 94.

61. *Id.* at 91–92.

The lessons drawn by the study authors, however, are not as bleak as they first appear. Most importantly, the study provided ample evidence that citizens made substantial commitments to participation in the opportunities created by the federal EZ mandate.<sup>62</sup> In each of the six EZ cities, community residents and organizations made major commitments of time and resources in the planning and proposal phases of the EZ, and several cities made ambitious plans for city government reform that outlined more permanent and significant roles for community groups in the development of their neighborhoods.<sup>63</sup> Community based organizations participated actively in the design of these plans, and embraced the EZ designation as an important opportunity to participate in community decision making and to make change in their deteriorating neighborhoods.<sup>64</sup>

Local governments in the 1980s and 1990s, facing fiscal and political constraints that drove them toward models of privatization, embraced a number of experiments with formal sub-local structures for urban revitalization.<sup>65</sup> Some scholars characterize these as attempts to “spur more neighborhood planning and citizen engagement”<sup>66</sup> such as Business Improvement Districts (BIDs). BIDs, by definition, should fail a test of inclusive civic engagement, however, because they are designed to restrict participation to business and property owners, who are authorized by local ordinance to collect additional property assessments in a designated geographical area, and to spend the money on additional services (no longer provided by strapped local governments at a sufficient level) for private security services and street beautification.<sup>67</sup>

Local governments also decentralized via another more direct form, the neighborhood service center, which may afford greater access to services, but not to policy-makers or neighborhood-changing decisions.<sup>68</sup> In the same time period, the “backyard revolution” of private neighborhood-based groups mobilizing to fight off projects they view as noxious, shares with BIDs the limitations of self-interested, single-issue, outcome orientation, and thus offer an insufficient model of civic participation.<sup>69</sup> These lack the qualities of deliberation and of inclusion—for example, they fail to mix residents in the neighborhood with others who have stakes in the same area, such as educators,

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62. GITTELL, *supra* note 52, at 97.

63. *Id.*

64. *Id.*

65. Matthew J. Parlow, *Civic Republicanism, Public Choice Theory, and Neighborhood Councils: A New Model For Civic Engagement*, 79 U. COLO. L. REV. 137, 159 (2008).

66. *Id.* at 159.

67. Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75, 84–85 (1998); Parlow, *supra* note 66, at 159–60.

68. Parlow, *supra* note 65, at 174–75.

69. *Id.* at 160.

employers, and environmentalists.<sup>70</sup> The campaign character of “not in my back yard” (NIMBY) resistance deters communication to understand the needs of the larger community or to illuminate for government officials the interests of the collective community.<sup>71</sup> Once the campaign-style community activism ends and the group disbands, the avenues for citizen engagement to address additional issues facing the community may also cease.<sup>72</sup>

Less attention has been accorded the democracy dimensions of activist campaigns by low-income communities in redevelopment decisions. Analytically these are not NIMBYism in the usual sense of protecting a status quo; rather the objective of the fight is to gain the opportunity to participate, rather than acquiesce, in the nature of the changes proposed to their neighborhoods.<sup>73</sup> Acquiescence and disaffection are the results of mandatory public hearings conducted to meet the letter rather than the spirit of the law, and window-dressing participation processes in which municipal officials demonstrate no real desire to engage community residents in the design or modification of redevelopment plans.

### C. *Explaining Limited Civic Engagement*

Among scholars, lack of citizen engagement regarding local government decision-making is explained by twentieth century growth in the government bureaucracy, and inaccessible government officials making decisions without consulting the community.<sup>74</sup> A more critical school of thought characterizes local governments and their decision- and policy-making processes as structured to discourage neighborhood group formation and involvement.<sup>75</sup> More particular to the history of urban antipoverty and redevelopment programs, studies indicate that local government bureaucracies refused to cede any power or influence to community groups, even where ‘public participation’ was adopted formally into decisional processes.<sup>76</sup> Limitations

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70. *Id.* at 161.

71. Smith, *supra* note 37, at 256–57 (discussing NIMBYism in land use contexts).

72. Parlow, *supra* note 65, at 161. This leaves local governments with two basic methods to engage communities: the “try and sell” method and reliance on neighborhood organizations to provide input to decision-making. *Id.* at 162–63.

73. Smith, *supra* note 37, at 264–66.

74. See, e.g., Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1069 (1980).

75. See Parlow, *supra* note 66, at 141–42; Bach, *supra* note 44, at 96; Ngai Pindell, *The Right to the City*, 24 HARV. BLACKLETTER L.J. 70, 70 (2008).

76. Bach, *supra* note 43, at 128–32 (community action agencies and War on Poverty programs did not break out of an orientation of services provision and income maintenance, thus they focused on individuals rather than institutional change); MacFarlane, *supra* note 43, at 876 (city leaders revolted in response to the federal effort to fund local community groups directly); Eleanor Holmes Norton, *Public Assistance, Post-New Deal Bureaucracy, and the Law: Learning from Negative Models*, 92 YALE L.J. 1287, 1293 (1983).

notwithstanding, the seeds of the Community Action program have borne fruits of community initiative and capacities for deliberative problem-solving, in the many thousands of neighborhood organizations engaged in community development recounted in William Simon's analysis, *The Community Economic Development Movement*<sup>77</sup> and a burgeoning literature of community-based, equitable, and fair development practices in American cities.<sup>78</sup>

The EZ study shows that, with even minimal incentives to work with other community groups, the private sector, and local government, it is possible to create an environment in which community residents and their organizations are able and willing to expand their communities' capacities to achieve their own redevelopment. The early accomplishments of communities in planning the EZ programs confirms the efficacy of a national policy providing such incentives, and that "citizen participation is a realizable goal if communities see change as a priority and if their participation is essential to the political process."<sup>79</sup>

## II. Citizen Engagement In the Public Finance of Redevelopment

### A. *Competing Visions of 'Citizen Engagement' in 'Redevelopment'*

Every large city has a place like the Sandtown-Winchester community of West Baltimore, a 72-block area that struggles with concentrated and persistent poverty. Once it was a thriving African-American community, where Cab Calloway grew up, and Thurgood Marshall went to high school.<sup>80</sup> But once-great industrial cities have been emptying out for more than 50 years. Sandtown lost about half of its population in the 1970s and 1980s, and by 1990

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77. See generally WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT* (2001).

78. Angela Glover Blackwell, *It Takes a Region*, 31 *FORDHAM URB. L.J.* 1303, 1316 (2003). The broad movement for equitable and accountable development strives to assure that those who benefit from publicly supported redevelopment include the segments of the public historically affected adversely by such development. *Id.* at 1316. The concept "equitable development" is an approach to development that is "grounded in community building and participation; it embraces complexity and comprehensiveness and promotes inclusion through new strategies and policies." *Id.* See also Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in *UCLA SCHOOL OF LAW, PUBLIC LAW & LEGAL THEORY RESEARCH PAPER SERIES 2006 313* (Research Paper No. 06-30) (defining the term "accountable development"); Shelia R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 *CAL. L. REV.* 2001, 2002-03 (2007) (discussing "the emergence of an 'accountable development' strand of activism within the CED movement.").

79. GITTEL, *supra* note 52, at 97.

80. Barry Yeoman, *Left Behind in Sandtown*, *CITY LIMITS* (Jan. 1, 1998), <http://www.citylimits.org/news/articles/2439/>.



almost one fourth of Sandtown's row houses stood vacant.<sup>81</sup> The median family income in Sandtown today is about \$22,000, slightly below the 2013 poverty level for a family of four.<sup>82</sup> More than a third of households have incomes below the poverty level, which is twice the rate of Baltimore City as a whole.<sup>83</sup> Substandard housing, ineffective schools, a lack of physical and economic resources, and unemployment, undermine residents' hopes and futures. Rates of substantiated lead poisoning are the highest in the city;<sup>84</sup> and about half of all children between the ages of 10 and 17 have been arrested, mostly in connection with drug-related offenses.<sup>85</sup> Sandtown's rates for both homicide and non-fatal shootings are more than double the citywide rate.<sup>86</sup> It is home to 15,000 citizens of Baltimore, in Maryland.<sup>87</sup>

Sandtown reflects the trajectory of impoverished urban areas over the last several decades. Economic forces have afflicted urban neighborhoods, by the absence of a strong and consistent urban policy and by an overarching pattern of disinvestment. In the 1990s, a sharp decline in the number of high-poverty neighborhoods<sup>88</sup> meant that children's "spells" of exposure to severe neighborhood poverty became shorter as well, reflecting declines in the level of poverty surrounding them.<sup>89</sup> But that situation has since reversed: The number of extreme-poverty neighborhoods has grown in cities across the

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81. New Song Academy, Linking Education and Community Development to Build Stronger Families and Neighborhoods, The Annie E. Casey Foundation, 2 (2003), [http://www.chapinhall.org/sites/default/files/old\\_reports/105.pdf](http://www.chapinhall.org/sites/default/files/old_reports/105.pdf).

82. Computations for the 2013 Annual Update of the HHS Poverty Guidelines for the 48 Contiguous States and the District of Columbia, U.S. Department of Health & Human Services: Office of the Assistant Secretary for Planning and Evaluation, <http://aspe.hhs.gov/poverty/13computations.cfm>.

83. BALT. HEALTH DEP'T, 2011 NEIGHBORHOOD HEALTH PROFILE: SANDTOWN-WINCHESTER/HARLEM PARK 4 (Dec. 2011), available at <http://www.baltimorehealth.org/info/neighborhood2011/47%20Sandtown.pdf>.

84. *Vital Signs*, BALT. NEIGHBORHOOD INDICATORS ALLIANCE (Spring 2013), <http://www.bnijfi.org/communities> (analysis performed by author).

85. See BALT. HEALTH DEP'T, *supra* note 83, at 6.

86. *Id.* at 7.

87. *Vital Signs*, *supra* note 84.

88. PAUL A. JARGOWSKY, BROOKINGS INST., STUNNING PROGRESS, HIDDEN PROBLEMS: THE DRAMATIC DECLINE OF CONCENTRATED POVERTY IN THE 1990S, at 4 (2003), available at <http://www.brookings.edu/research/reports/2003/05/demographics-jargowsky>.

89. PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 89 (2013).

United States.<sup>90</sup> These communities have borne the brunt of four decades of economic restructuring and political disinvestment.<sup>91</sup>

This spring, author Alex Kotlowitz wrote in the *New York Times* on the high price we pay as a society that so many people in cities—especially children—are exposed to shootings and murder.<sup>92</sup> Cities commonly report the number of people killed, but not the number of people shot and wounded but not killed.<sup>93</sup> In Chicago in the last fifteen years, 8000 people were killed, most in a concentrated part of the city; whereas in the same period, more than 36,000 people were shot and wounded.<sup>94</sup> In 2011, more than 80% of all murders happened in a public place, observed by bystanders: in a park, on the street, in a restaurant.<sup>95</sup> Kotlowitz urges us to attend also to these casualties in the toxic stew of unwell-being that we allow as a matter of policy in American cities.<sup>96</sup> The attorney general's National Task Force on Children Exposed to Violence reported in December 2012 that "tens of millions" of children in the U.S. experience or witness violence in their communities, for which public investments in treatment, healing and prevention are necessary.<sup>97</sup> Surely we know without a national report, that in poor neighborhoods, emergency rooms are not discharging the walking wounded into therapeutic settings.

Across town, in what little remains of a residential neighborhood known to long-time residents as Middle-East, bright new buildings are rising where redbrick row homes and subsidized rental housing once stood. The new

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90. Elizabeth Kneebone & Alan Berube, *Reversal of Fortune: A New Look at Concentrated Poverty in the 2000s*, BROOKINGS INST. (Aug. 8, 2008), <http://www.brookings.edu/research/papers/2008/08/08-concentrated-poverty-kneebone>.

91. See, e.g., SHARKEY, *supra* note 89, at 47–82 (discussing profound inequalities of 'place', as a consequence of city-level policy responses to economic shifts, through case studies of Atlanta, Dallas, Los Angeles, Detroit and Philadelphia) (Indeed the force of these national phenomena fuel a tendency to downplay the important role of local policies, histories and political structures in shaping the trajectories of individual neighborhoods within cities. Local zoning and land use ordinances have provided municipalities with the ability to exclude unwanted neighbors or direct the sting of unwanted land uses, thus limiting the types of families that can afford to live in a community, and limiting the communities in which many families can live. Local governments in the U.S. have uniquely broad discretion to engineer economically exclusive communities.).

92. Alex Kotlowitz, *The Price of Public Violence*, N.Y. TIMES, Feb. 24, 2013, at SR1.

93. *Id.*

94. *Id.* (Baltimore's Health Department neighborhood profiles do report rates for homicide, non-fatal shootings, and domestic violence. Sandtown-Winchester rates for homicide: and non-fatal shootings are more than double the citywide rate (Table 4), and its domestic violence incidence rate is the city's highest (Table 8: Social Determinants of Health).).

95. Kotlowitz, *supra* note 92.

96. *Id.*

97. U.S. ATT'Y GEN. TASK FORCE ON CHILD. EXPOSED TO VIOLENCE, REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 18 (Dec. 12, 2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

buildings include biotech space for the adjacent Johns Hopkins Hospital System, senior housing, graduate student housing, and new and renovated for-sale “workforce housing.”<sup>98</sup> Eight hundred homeowners were displaced to assemble the land for the planned 80-block redevelopment, aided by the city’s exercise of eminent domain powers,<sup>99</sup> and with condemnation awards supplemented by the Annie E. Casey Foundation.<sup>100</sup>

Back in Sandtown, in a 15-square block focus area in the middle of the larger 72 square block area, the model is not urban renewal-by-removal, but multivalent “community development.”<sup>101</sup> A resident-led and resident-serving organization, New Song Urban Ministries, has augmented the Habitat model of building or rehabbing houses for purchase by low- and moderate-income owners.<sup>102</sup> Habitat-Sandtown has now rehabbed and sold 300 neat homes, and they have also developed a range of institutions and services designed for the community’s needs.<sup>103</sup> In addition to ongoing acquisition and rehab, they have established a health center, a job center, a school, programs in the arts, a transitional house for women with substance abuse problems, and more.<sup>104</sup> Importantly, Baltimore’s mayor helped to orchestrate a partnership between community efforts, the City, and key private developer and non-profits, to assemble public and private funding for the neighborhood transformation efforts. Over a decade the public/private partnership supported synergistic efforts to address interrelated development needs of the neighborhood: employment, education, and health outreach, as well as rebuilding physical structures.<sup>105</sup> “We’re doing community development rather than urban

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98. See ANNIE E. CASEY FOUND., THE EAST BALTIMORE REVITALIZATION INITIATIVE: A CASE STUDY OF RESPONSIBLE REDEVELOPMENT (2010), available at <http://www.aecf.org/MajorInitiatives/CivicSites/~media/PDFFiles/Baltimore/EBDIReport060810compressed.pdf>.

99. Eric Siegel, *Residents Must Make Way for East-Side Biotech Park: Razing and Restoration Planned for Project’s 2<sup>nd</sup> Phase*, BALT. SUN, Sept. 28, 2006, at 1A. (Proponents forecast that the the 3-phastf project would produce between 4,000 and 8,000 new jobs and 1,200 units of new and rehabilitated mixed income housing.). Edward Gunts, *Redevelopment Project Garners National Award*, BALT. SUN, Jan. 13, 2003, at 1C.

100. Kate Shatzkin, *Casey Foundation Stakes Reputation on East-Side Project: Commits \$5 Million to Aid 800 Displaced Households in Redevelopment of Area*, BALT. SUN, Dec. 2, 2002, at 1A.

101. This statement is the author’s personal knowledge.

102. See *About Us*, SANDTOWN HABITAT FOR HUMANITY, [http://www.sandtownhabitat.org/about\\_us.htm](http://www.sandtownhabitat.org/about_us.htm) (last visited Mar. 5, 2014).

103. *Id.*

104. *Id.*

105. Independent researchers report a housing transformation (over 200 new affordable homeownership houses, 100 reclaimed vacants, and renovation of 600 public housing units), and marked reductions in crime and poverty (in part reflecting city-wide declines). Stefanie DeLuca & David Rosenblatt, *Sandtown-Winchester—Baltimore’s Daring Experiment In Urban Renewal: 20 Years Later, What Are the Lessons Learned?*, ABELL REP., Nov. 2013, at 1–2, available at <http://www.abell.org/pubsitems/arn1113.pdf>.

renewal,” explained the founding executive director, the Reverend Allan Tibbles.<sup>106</sup> “We try to make it possible for families to stay here rather than relocating them. We don’t knock other people’s approaches. We just want to make sure that the long-term neighborhood residents are the ones who benefit.”<sup>107</sup>

The Sandtown and East Baltimore Development Initiative [“EBDI”] projects illustrate two differing approaches to addressing the endemic social and environmental problems of shrinking cities. In Sandtown, the essential features of a community—social capital, civic infrastructure, and support networks—are being rebuilt, painstakingly, along with physical redevelopment to restore and reuse vacant houses. The community-based nonprofit developer leading the project calls for the organization to work in the areas of health, employment, economic development, community outreach, planning for new development, and advocating for public safety.<sup>108</sup> The EBDI project proceeds the other way around, focused first on physical renewal as economic development, assuming residents must be displaced, in the process.<sup>109</sup> It contemplates that a replacement community will be established once the revamped “economic engine” is in place.<sup>110</sup>

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106. Harold MacDougall, *The Outer Harbor*, BALT. MAG. (March 2006), available at <http://www.nsum.org/Outer%20Harbor.pdf>.

107. *Id.*

108. SANDTOWN HABITAT FOR HUMANITY, *supra* note 102 (Rev. Tibbles’ New Song Urban Ministries developed the New Song Worship and Arts Center, and initiated Sandtown Habitat for Humanity, the arm by which most Sandtown renewal has been achieved; highlighting among its achievements, operation by a neighborhood-based organization of neighborhood-based staff and board of directors, training and employment of neighborhood men and women in construction and construction management, facilitation of over \$20 million in investments in Sandtown, providing homeownership for low-income and very-low income families, returning 300 formerly vacant houses to the tax rolls, assuring lead-safe housing for hundreds of children, and serving as “a catalyst for change and a sign of hope.”).

109. *Too big to Fail? Betting a billion on East Baltimore*, DAILY REC., <http://thedailyrecord.com/too-big-to-fail-betting-a-billion-on-east-baltimore/> (last visited Mar. 5, 2013) (the premier legal newspaper of the Baltimore region, The Daily Record, has chronicled extensively the decade-long EBDI development, and in 2011 published a retrospective series, available online with reportage, interactive map and timeline, and videos). For a cogent account of the \$1.8 billion effort to transform 88 acres surrounding Johns Hopkins University Hospital from a decaying community to a “world-class biotech park and idyllic community,” see Melody Simmons & Joan Jacobson, *Daily Record investigation: A dream derailed*, DAILY REC. (Jan. 30, 2011), <http://thedailyrecord.com/2011/01/30/daily-record-investigation-a-dream-derailed/>.

110. Melody Simmons & Joan Jacobson, *Daily Record investigation: An uncertain future*, DAILY REC. (Feb. 3, 2011), <http://thedailyrecord.com/2011/02/03/daily-record-investigation-an-uncertain-future/#ixzz2gwrBeXIw> (significant ink has been expended expressing anger about extensive relocation of residents, and the lack of transparency and city oversight of the project and expenditures of public funds. To illustrate, City Council member Carl Stokes, who represented part of the affected area, pledged to call for a public audit and hearings at City Hall on the project’s progress and finances. “We’re moving toward a fight and showdown with EBDI

### B. Community Distrust of Local Government Development Incentives

Tax Increment Financing (TIFs) makes a lot of community residents angry. TIFs provide local governments a means to self-finance desired development, by diverting the tax-base increases in the designated TIF area to pay for site improvements or other costs of the TIF development.<sup>111</sup> Because TIFs can be used to plug worrisome holes in the fabric of revenue and infrastructure provision, TIFs have become a regular feature of local politics, and contemporary development in struggling cities. In 1970 only a handful of states had authorized their use by local governments, but as federal funds dried up through the 1980s, more states appreciated TIFs' utility, and today forty-nine states and the District of Columbia have enacted enabling legislation.<sup>112</sup> Most states condition TIF approval upon findings either of "blight" or that "but for" the TIF, a proposed redevelopment would not proceed.<sup>113</sup>

This is the heart of citizens' fury and dejection over TIFs. One evolutionary trend in TIF law in several states has been to loosen the qualifying restrictions, to extend their use to projects promising "economic development" to bring jobs. The "but for" requirement is very difficult to police, both analytically and politically, because vague allowable purposes like "economic development" create potential for overuse and abuse.<sup>114</sup>

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because we still feel the sting of the relocation." *Id.*) Of the \$564.7 million spent as of the 2011 report, \$212.6 million had come from development incentives provided by the cash-strapped city of Baltimore and state and federal governments. Joan Jacobson & Melody Simmons, *Daily Record Investigation: The muddled money trail of the East Baltimore Development, Inc. project*, DAILY REC., Jan. 31, 2011, <http://thedailyrecord.com/2011/01/31/daily-record-investigation-the-muddled-money-trail>.

111. Tax increment finance (TIF) is a method to finance part of the public and private costs of local economic development. It captures the tax base increases in areas designated as TIF districts from the general tax rolls and uses this revenue stream to finance site improvements or other economic development costs. In the usual model, public-sector bonds are then sold to raise the money needed to finance site improvements at the beginning of the project, and the revenues from the captured tax base are used to repay the bonds. When the bonds have been retired, the captured tax base reverts to the general tax rolls. TIFs may be backed by revenue bonds – paid only from the anticipated revenue stream from the TIF project, or by general obligation bonds – backed by the assets of the issuing government.

112. See COUNCIL OF DEV. FIN. AGENCIES AND INT'L COUNCIL OF SHOPPING CTRS., TAX INCREMENT FINANCE: BEST PRACTICES REFERENCE GUIDE 1 (2007), available at <http://www.mrsc.org/artdocmisc/cdfa.pdf>; Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 65 (2010) (observing that TIFs have been implemented in virtually every kind of community, including central business districts, gritty urban industrial neighborhoods, small towns, suburbs, and even farmlands on the urban fringe).

113. Briffault, *supra* note 112, at 71.

114. *Id.* at 71–72 (Indeed, at least sixteen states have recently done away with the blight limitation. Thus, despite the origins of TIFs in urban renewal policies, increasingly it is possible to use TIF as an infrastructure finance mechanism, in greenfields. In some states, like Indiana and

Several TIF-specific studies reveal that TIFs shift rather than genuinely spur development. For example, analysis of five Chicago-area TIFs concluded that none delivered a net increase in jobs; on the contrary, the job losses in the neighborhoods surrounding each TIF district were greater than any increase in the number of jobs inside the TIF district.<sup>115</sup> Preferential usage is documented in a 2003 Brookings study which found that nearly 60 percent of the TIF-captured tax base in metropolitan St. Louis was in the outermost areas suffering little or none of the economic stressors on which TIF statutory authorization was to turn.<sup>116</sup> Neighborhood advocates in Chicago slam that city's immense TIF program for subsidizing such profitable global corporations as Coca Cola, Hyatt Hotels and Wal-Mart, diverting public funds needed to maintain fifty public schools.<sup>117</sup> Studies in Chicago provide the data for concluding that TIFs tend to favor big businesses.<sup>118</sup> The consequence—not

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Iowa, a TIF can be used in "economic development areas" the only requirement for which is that the TIF will have "significant economic benefit," Virginia law permits the use of TIF by local government in any area it designates to promote "commerce and prosperity."). *See also*, Kristen Erickson, *Protecting Low Income Residents during Tax Increment Financing Redevelopment*, 36 WASH. U. J. L. & POL'Y 203, 204 (2011) (illustrating the uses of TIF in high-wealth and low-wealth communities of greater St Louis, Missouri).

115. CTR. FOR ECON. POL'Y ANALYSIS ET AL., *THE RIGHT TOOL FOR THE JOB?: AN ANALYSIS OF TAX INCREMENT FINANCING 1-2* (March 2003), available at [http://heartland.org/sites/all/modules/custom/heartland\\_migration/files/pdfs/11869.pdf](http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/11869.pdf) (concluding from five Chicago-area case studies that TIF failed to result in net increase in employment; job losses in the neighborhoods surrounding each TIF district were greater than any increase in the number of jobs inside the TIF district).

116. Tom Luce, Brookings Inst., *Reclaiming the Intent: Tax Increment Finance in the Kansas City and St. Louis Metropolitan Areas 16* (2003), available at <http://www.brookings.edu/~media/research/files/reports/2003/4/metropolitanpolicy%20luce/lucetif.pdf>. *See also*, studies cited in George Lefcoe, *Redevelopment Takings After Kelo: What's Blight Got to Do With It?*, 17 S. CAL. REV. L. & SOC. JUST. 803 (2008), and George Lefcoe, *After Kelo, Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 TUL. L. REV. 1 (2008).

117. *See* Ellyn Fortino, *Community Activists Turn Attention to Chicago's TIF Program in Light of CPS Budget Cuts*, PROGRESSILLINOIS (July 8, 2013), <http://www.progressillinois.com/quick-hits/content/2013/07/03/community-activists-turn-attention-chicago-s-tif-program-light-cps-bud>; Jonathan Q. Morgan, *Using Economic Development Incentives: For Better or Worse*, POPULAR GOV'T (Winter 2009), at 16 (In North Carolina, residents doubted the net benefit of Winston-Salem's \$280 million package of incentives for Dell, \$260 million in county incentives to Google, and smaller packages to Bridgestone/Firestone and Goodyear. These concerns are merely illustrative of widespread skepticism or at least a "nagging sense" that development incentives allow state and local officials to pay large corporations "too much for jobs and investment while overlooking the needs of existing industries and small businesses.")

118. *See* COLIN GORDON, *MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY* (2008). The book is accompanied by a website, <http://mappingdecline.lib.uiowa.edu/map/>, which illustrates the use of various redevelopment incentives. For criticism of insufficiently specific statutory authorizations for TIF use, *see generally*, Colin Gordon, *Blighting the Way:*

lost on the public—is that small businesses are left to pay the taxes that provide the profit margin to the TIF development partners.<sup>119</sup>

Furthermore, in St Louis, a decade of use of development incentives across the metro region was found to contribute notably already dramatic patterns of racial and economic isolation and to deepening neighborhood distress over time.<sup>120</sup>

While in theory a TIF pays for itself because it requires no new taxes, and raises the tax base of the project area over time,<sup>121</sup> in practice, TIFs are just one of a toolkit of economic development incentives deployed by local government, often in tandem with TIFs. These include enterprise zones, tax abatements, special assessments and special tax districts, business improvement districts (BIDs), and intergovernmental loans, grants and tax credits.<sup>122</sup>

Misuse of TIFs in these ways works a distortion of market premises. The economic theory undergirding TIFs is that they make possible projects that developers would not find sufficiently profitable to pursue.<sup>123</sup> Misuse of the TIF tool prompts the critique that a number of the projects were poorly

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*Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 306–07 (2003) (criticizing numerous state statutes and local approvals for the continuing lack of specificity as to what constitutes “blight”).

119. *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, *supra* note 118, at 306–07.

120. EAST-WEST GATEWAY, AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION 35–36 (Jan. 2011). The Assessment was a joint product of the region’s local elected officials, and documented that, while local governments in metro St. Louis diverted nearly \$6 billion in public tax dollars to subsidize private development through financial incentives, the cumulative effect was ineffective in increasing area tax revenue, increasing quality jobs, or helping municipalities avoid fiscal stress, and TIFs in one jurisdiction often coincided with job loss in neighboring areas. Areas of concentrated poverty, already at a disadvantage in competing for businesses, customers and jobs, are further handicapped by diversion of tax dollars to private developers catering to higher-income communities.

121. See Joan M. Youngman, *TIF at a Turning Point: Defining Debt Down*, STATE TAX NOTES, May 2, 2011), at 321.

122. Briffault, *supra* note 112, at 73. A number of studies argue that incentives have little or no direct effect on business decisions. For a review of these studies see generally Alan Peters & Peter Fisher, *The Failures of Economic Development Incentives*, 70 J. AMER. PLAN. ASS’N 27 (2004).

123. See Luce, *supra* note 116, at 16; see also Briffault, *supra* note 112, at 77–78 (discussing accounts that city officials may claim the TIF meets a statutory “but-for” standard in order to avoid charges of ‘give-away’ and to claim credit for projects “that would have occurred anyway.” In theory, a TIF pays for itself because it requires no new taxes, but raises the tax base of the project area over time.).

conceived—particularly in projects that result in upscale office and retail, without generating adequate ‘public goods’ to justify the public subsidy.<sup>124</sup>

Importantly, the technical understanding exists to successfully target public resources represented by development incentives, and to align their use with wider social goals than inducing private construction.<sup>125</sup> The first alignment technique is project evaluation.<sup>126</sup> Proper project evaluation necessarily requires evaluating the underlying public value of the proposed activity, as well as appraising the project’s financial viability.<sup>127</sup>

A TIF is a financial tool, but it should be wielded by government as a tool to public ends. The fact that it is a financial tool invites evaluating its use on financial bases alone.<sup>128</sup> But the financial viability of a project does not address the governance question of whether the project is worth doing, or that it represents the best use of public funds or city blocks. A project that results in a string of retail shops that increase the tax base just enough to pay off the public costs—i.e., making it ‘financially viable’ for the city, may generate only low-paying, part-time, no-benefit, or temporary jobs with no advancement opportunities for the workers who are hired.

Second, it is possible for shrinking cities to more thoughtfully target the development incentives they offer.<sup>129</sup> For citizens interested to redirect the use of development incentives like TIFs to the social and economic needs of residential communities, the most secure technique to do this is to change the enabling legislation, rather than to rely upon promises and appointments made by elected officials.<sup>130</sup> For TIFs, the allowable purposes provision can be limited to use in areas with specific social needs, such as very high unemployment.<sup>131</sup>

The thinking in city streets and neighborhoods is more direct: policy needs to shift to the needs of regular folk, which are all too often impeded by the choices of the political city. In this community perspective, cities must shift their sights from new built environments and in-movers, to a recombinant concern for the well-being of people who reside in the urban space. Part V suggests five dimensions of the social justice requisites of just development: well-being, equity, capability, livelihood, and sustainability. When members of the public argue that individuals and communities should have a greater voice in redevelopment decisions, they understand this relates to control of their

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124. Briffault, *supra* note 112, at 72.

125. See Luce, *supra* note 116, at 4.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 2.

130. *Id.* at v.

131. Luce, *supra* note 116, at 5.



economic fates, and their local economies. They intuitively embrace local democracy premises and rhetoric. Calls for greater public participation in redevelopment decisions represent one place on the continuum of contemporary forms of local-economy activism, including community benefits agreements, clawback provisions, plant-closing laws and anti-chain store ordinances.<sup>132</sup>

### C. *Democracy Deficits in Redevelopment Decision-Making*

#### 1. Participation's Import for Legitimacy, Transparency, and Accountability

The contemporary divide between citizens and their local governments concerning redevelopment decision-making poses a fundamental challenge to the legitimacy of local government decisions. The legitimacy challenge arises from the tremendous power over neighborhoods' wellbeing, wielded by politicians whose elections depend upon campaign donations and by unelected agency officials with limited oversight.<sup>133</sup> Trust in the institutions of government is essential for the public to continue to regard government as legitimate. Yet numerous sources report that societal trust in government has been declining significantly.<sup>134</sup> Proponents of robust citizen engagement observe that the legal mechanisms of governance can enhance trust, or conversely, serve as a source of further disaffection.<sup>135</sup> Lack of accountability, lack of transparency, limited reception of public inputs, and dissatisfaction with outcomes, may be expected to undermine trust in the legitimacy of governmental decisions.<sup>136</sup> Greater opportunities for public involvement are proposed as an antidote to these democracy deficits, to enhance accountability

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132. See Richard C. Shragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 530 (2009).

133. An extensive literature concerning the legitimacy of the administrative state is organized, as Professor Jody Freeman has suggested, primarily around "the need to defend the administrative state against accusations of illegitimacy." Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543, 546 (2000). See generally Mark Seidenfeld, *A Civic Republican Justification of the Bureaucratic State*, 105 HARV. L. REV. 1511, 1512 (1992) (suggesting that the growth of the powers and responsibilities of federal administrative agencies "calls into question the constitutional legitimacy of the modern federal bureaucracy"). See also Edward Rubin, *The Myth of Accountability and the Anti-Administrative Impulse*, 103 MICH. L. REV. 2073, 2094 (2005) (administrative agencies are the basic operational structure of modern government).

134. See David L. Markell, *Understanding Citizen Perspectives on Government Decision Making Processes as a Way to Improve the Administrative State*, 36 LEWIS & CLARK ENVTL. L. REV. 651, 677 (2006).

135. Frank B. Cross, *Law and Trust*, 93 GEO. L. J. 1457, 1460 (2005).

136. Commentators analyze additional concerns, such as "capture" of administrative process by the regulated industry. See, e.g., Michael E. Levine & Jennifer L. Forrence, *Regulatory Capture, Public Interest, and The Public Agenda*, 6 J. L. ECON. & ORG. 167 (1990).

and transparency, and to produce better informed and thus improved results.<sup>137</sup> The legitimacy of decisions, in the minds of citizens, must be assessed on two scores: the fairness or justice of the outcome of the decision making process, and the extent to which it is “procedurally just.”<sup>138</sup>

Americans and their cities have long relied upon the ballot box and the public hearing as the primary methods of public participation in the politics of urban development. Both approaches have proven of quite limited value to residents. We all know of ‘public engagement’ exercises that are neither public nor engaging. Most states’ land use laws require local governments to provide public notice and opportunities to comment (of at least a rudimentary sort) and to make quasi-legislative decisions at open meetings.<sup>139</sup> Hearings may be held on week days during working hours; participants may be required to sign up in advance to speak, or be limited to two minutes to speak, while officials converse among themselves without listening to what the public has to say.<sup>140</sup> Public input is held well after the fundamental decisions have been made.<sup>141</sup> Such examples are a travesty of citizen engagement. Public notice and comment is all too often practiced as “decide, announce and defend” rather than true discussion or engagement of the public in a deliberative decision making process.<sup>142</sup>

Exacerbating the tensions over urban redevelopment, America’s legacy cities are in a state of severe financial crisis, and it is not about to get better. The problem is heightened by budget shortfalls in state governments and by the growing pressures in Washington, D.C. to cut federal discretionary

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137. Markell, *supra* note 134, at 654. *See also* SANJEEV KHAGRAM, ET AL., BROOKINGS INST., OVERVIEW AND SYNTHESIS: THE POLITICAL ECONOMY OF FISCAL TRANSPARENCY, PARTICIPATION, AND ACCOUNTABILITY AROUND THE WORLD 3 (2012) (examining how and why improvements in transparency and public participation come about, finding significant factors to include widely publicized cases of corruption, and external influences to adopt enhanced norms of better public access and empowerment).

138. Markell, *supra* note 134, at 677–78.

139. *See* Alejandro E. Camacho, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions, Installment One*, 24 STAN. ENVTL. L.J. 3, 37 (2005) (discussing local laws as providing “minimal” participation procedures, which are “often fragmentary and confusing”). *See also*, Xavier DeSouza Briggs, *Doing Democracy Up Close: Culture, Power and Communication in Community Planning*, 18 J. PLAN. EDUC. RES 1 (1998) (discussing “how democracy gets done, and undone” in planning meetings, including failure to understand diverse communication styles and the subtle power relations that shape both public life and public discourse in such meetings).

140. *See generally* Smith, *supra* note 37 (observing that, “municipalities and redevelopment officials. . . in a legacy that endures to this day, often provided insufficient notice of perfunctory hearings at times and locations inconvenient to those ultimately impacted by the proposed redevelopment.”).

141. Camacho, *supra* note 139, at 16.

142. John S. Applegate, *Beyond the Usual Suspects: The Use of Citizens Advisory Boards in Environmental Decisionmaking*, 73 IND. L.J. 903, 908 (1998).

expenditures. The prospect of significant help for strapped older cities from states and the federal government is remote. These conditions are not a short-term reaction to the recent fiscal crisis and recession, but reflect long-term structural imbalances affecting legacy cities.<sup>143</sup> Difficult decisions loom, regarding spending, service levels, and sources of revenue. Typically, municipal laws do not require meaningful public engagement in local decisions implicating the city's fiscal condition.<sup>144</sup> Cities seek to maximize resources, preserve prerogatives and flexibility. In a political system where elected officials often wish to be re-elected and planning officials are appointed by those who are elected, the financial pressures may be expected to exacerbate the all-to-familiar patterns of window-dressing public participation, in urban development decision-making. Improvements to the present methods of citizen engagement are overdue to address the democracy deficits in local-government redevelopment decision-making.

There may be insights to glean from the now-flourishing experimentation in forms of citizen engagement and deliberative democracy. These show promise for how local residents can be engaged in, and become partners with, local officials in making decisions of consequence that impact all community members. "Deliberative democracy," "participatory governance," citizen advisory and citizen jury methods, issues forums, study circles and planning cells, illustrate significant public interest in the matters being decided by government officials, and more robust forms for people to weigh in.<sup>145</sup> Do these offer means to robustly inclusive public engagement processes, that include the people most often overlooked, unrepresented, and left behind?

## 2. Participation's Import for Procedural and Social Justice in Poor Communities

The long legacy of disparate impact of redevelopment decision making on poor and minority neighborhoods raises additional challenges to the legitimacy of local-government procedures. The first two decades of urban renewal displaced hundreds of thousands of urban households, mostly African-Americans. The distributional and procedural unfairness led to legal reforms

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143. Patricia Salkin & Charles Gottlieb, *Engaging Deliberative Democracy at the Grassroots: Prioritizing the Effects of the Fiscal Crisis in New York at the Local Government Level*, 39 *FORDHAM URB. L.J.* 727, 728–29, 731–32 (2012).

144. *Id.* at 755–56 (arguing that state law typically requires a single public hearing prior to local decisions, thus the present-day forces imposing sharp fiscal constraint create an excellent opportunity to integrate emerging models of more robust citizen participation into decisions of local government spending priorities). See also Sean Nolan, *Negotiating the Wind: A Framework to Engage Citizens in Sitting Wind Turbines*, 12 *CARDOZO J. CONFLICT RESOL.* 327, 355 (2011) (proposing "collaborative governance" techniques to bring greater public involvement in siting decisions than the traditional notice and an opportunity to be heard).

145. See *infra* note 146 and accompanying text.

through the early 1970s that added somewhat greater public participation rights, and relocation assistance, to affected residents, as a federal condition on local jurisdictions' qualification for redevelopment revenues.<sup>146</sup>

Those displaced by urban renewal experienced profound losses that presaged those borne by communities demolished because of plant expansions and development-related takings.<sup>147</sup> Losses included economic loss,<sup>148</sup> destruction of the social and cultural capital of the community,<sup>149</sup> and "loss of faith in government."<sup>150</sup> Racial and economic segregation profoundly affect the relocation options for those displaced by redevelopment. Minority and low-income communities bear a disproportionate amount of the environmentally harmful land use practices in U.S. cities and towns.<sup>151</sup>

Poverty has many dimensions, extending far beyond a lack of income. Its significance to human flourishing and to the well-being of American cities is that people living in poverty face deprivation of choices, capabilities and power to influence development decisions or capture the economic benefits of that development. The lack of political power among low-income and minority communities has been well-documented by the social sciences,<sup>152</sup> with corresponding adverse consequences for participation in redevelopment planning.<sup>153</sup> To substantively contribute to government decision-making and planning, citizens and their organizations must achieve certain credibility with public officials. Yet living in neighborhoods of material deprivation tends to reproduce stigmatization, discrimination, and exclusion from development decision-making.

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146. See Smith, *supra* note 37, at 249.

147. John J. Bukowczyk, *The Decline and Fall of a Detroit Neighborhood: Poletown vs. G.M. and the City of Detroit*, 41 WASH. & LEE L. REV. 49, 57–58 (1984).

148. MINDY THOMPSON FULLILOVE, ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT 79–99 (2004).

149. *Id.* at 164–175 (loss of the structure and supports of the neighborhood including the dispersal of family and neighbors and loss of community organizations).

150. *Id.* at 99 (stating a "deepening, deepening distrust and mistrust between the black community and the city government").

151. Alex Geisinger, *The Benefits of Development and Environmental Injustice*, 37 COLUM. J. ENVTL. L. 205, 209 (2012).

152. *Id.* at 225; Henry E. Brady, Sidney Verba, & Kay Lehman Schlozman, *Beyond SES: A Resource Model of Political Participation*, 89 AM. POL. SCI. REV. 271, 273–74 (1995) (discussing correlation between political participation and civic skills of communication and organizational capacity, which are acquired through education, type of employment, and participation in voluntary associations and churches).

153. See Camacho, *supra* note 139, at 36; Briggs, *supra* note 139, at 3; Smith, *supra* note 142, at 243.

The United States has a long history of excluding poor and minority communities from the benefits of urban planning programs,<sup>154</sup> and from the planning process.<sup>155</sup> Two forms are potentially addressed by authentic public engagement: *meaningful inclusion*, constructing the decision-making stage of the process to incorporate affected-community members; and *procedural practices*. The Inclusivity Principle is essential to mediate the tendency of professionals to exclude non-experts and low-wealth stakeholders. Community leaders who have an historical perspective regarding the city's past neglect in providing physical improvements and services to low-income neighborhoods, may be capable participants in public processes, yet be disfavored in appointment to the relevant task force or advisory body.<sup>156</sup> The mayor's people may worry that such leaders will be less dedicated to the technical or strategic perspectives of city staff than to address an accumulation of long-neglected problems in the community.<sup>157</sup> Procedural choices also work exclusion, such as scheduling public meetings downtown at midday, limiting the agenda to presentation of staff reports.<sup>158</sup>

The financial limitations of poor neighborhoods, in comparison to business elites favoring redevelopment, surely also translate into a limitation on "citizen engagement," particularly to the extent that the wheels of local politics are turned by money. Lack of participation in decision-making may be a consequence of poverty, as well as a defining feature . . . .

This complexity in the fabric of city life requires more, not less, serious commitments to deeper democracy and enhanced civil engagement in local government's decisions to use development incentives. One area attending to

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154. See, e.g., James A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and their Impact on Poor and Minority Ethnic Populations*, 21 *UCLA J. ENVTL. & POL'Y* 45, 66–70 (2002-2003).

155. *Id.* at 66; See Chester W. Hartman, *Relocation: Illusory Promises and No Relief*, 57 *VA. L. REV.* 745, 808–13 (1971); Camacho, *supra* note 139, at 38; Briggs, *supra* note 139, at 3; Smith, *supra* note 37, at 249.

156. Briggs, *supra* note 139, at 2–3. A related gap exists in the communication between technically sophisticated professional staff, on the one hand, and citizens concerned about issues that cross the professions and departments of government. John Nalbandian, *Professionals and the Conflicting Forces of Administrative Modernization and Civic Engagement*, 35 *AM. REV. PUB. ADMIN.* 311, 317 (2005).

157. See Robert Chaskin et al., *Participation, Deliberation, and Decision Making: The Dynamics of Inclusion and Exclusion in Mixed-Income Developments*, 48 *URB. AFF. REV.* 863, 869 (2012) (noting professionals' concerns about neighborhood residents' relevant expertise).

158. See, e.g., Stephanie E. Farquhar, *Making a University City: Cycles of Disinvestment, Urban Renewal and Displacement in East Baltimore* (May 2012) (unpublished Ph.D. dissertation) (on file with author) (providing a recent examination of the persistence of such practices in the East Baltimore Development Initiative).

inclusion of minority and low-wealth communities' views is the arena of environmental justice.<sup>159</sup>

### 3. Reforming the Participation Requirements

The legal framework for meaningful community engagement processes is overdue for a twenty-first century overhaul. Government structures are creatures of design, not carved in stone tablets, and can be designed well, rather than badly.

Administrative law provides the legal framework for rulemaking and adjudication, public meetings and sunshine laws, public information acts, advisory committee rules, and in recently, legislation authorizing “negotiated rulemaking” and administrative dispute resolution. At the federal level, hundreds of statutes require “public participation” by government agencies, yet it is nowhere defined.<sup>160</sup> The phrase appears frequently in connection with land use and the environment, and appears with various adjectives such as “adequate public participation,” “full public participation,” or public participation “to the maximum extent,” and refer to “a meaningful opportunity for public comment.”<sup>161</sup>

The legal framework for public engagement is somewhat stronger at the level of local government, where some municipalities are adopting ordinances and charter provisions to encourage new forms of citizen participation.<sup>162</sup>

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159. See discussion *infra* note 189.

160. See, e.g., Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685 (Jan. 21, 2009). At the federal level, on his first day in office President Barack Obama directed federal agencies to adopt plans to engage the public, and stakeholders from the public, private and nonprofit sectors, thereby committing to “an unprecedented level of openness in Government” and “a system of transparency, public participation and collaboration,” serving the purposes to strengthen democracy, ensure the public trust, and promote government efficiency and effectiveness. *Id.*

161. Lisa Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 2010 WISC. L. REV. 297, 318 (2010). Bingham’s excellent study is an invaluable accounting of the inroads that robust public participation practices have made into the U.S. Code. According to Bingham, while not expressly defining the term, some code sections explain “how and with whom” agencies should conduct public participation (e.g., a required “planning council” that shall “establish methods for obtaining input on community needs and priorities which may include public meetings. . . focus groups, and convening ad hoc panels”). *Id.* at 319. Including requirements for consultation or address specific processes such as workshops, nomination procedures, and public education. *Id.* Some provisions seek to foster public participation by addressing the time period for public consultation. *Id.* at 320. “At least three months before final adoption, . . . the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans”) and still other code sections address the quality of participation, mentioning communication, cooperation, and exchange of information. *Id.*

162. See, e.g., *Public Engagement Publications*, INST. FOR LOCAL GOV’T., <http://www.ca-ilg.org/post/public-engagement-publications> (last visited Mar. 5, 2014).

However encouraging that trend may be, there remain many thousands of local governments in which no such measures are in the works to enhance citizen engagement, governmental transparency, or accountability for outcomes. Clearer legal authority for more robust forms of public engagement is in order.<sup>163</sup> Part IV of this article seeks to identify principles and practices for inclusion to enhance the democratic dimensions of more robust citizen engagement in local-government redevelopment decision-making. Part III first surveys emerging theories and practices to deepen democracy through participatory processes.

### III. A RISING TIDE OF PARTICIPATORY DEMOCRATIC PROCESSES

#### A. *Whose Reality Counts? Defining "Participation."*

The professions that study "participation" generally define public or community participation broadly, as members of the public taking part in any of the processes of formulation, passage and implementation of public polities. Scholars studying urban politics recognize the value of public participation as a means to reduce existing power asymmetries in political decision-making. Participatory arrangements can involve citizens in public policy through stages of interest articulation and deliberation. Such participatory arrangements are often sought by community residents in the hope that they will redirect public policy toward the 'true' needs of the citizenry, provide local knowledge and fresh ideas, and lead to more responsive and broadly supported policy solutions to address "wicked" problems.<sup>164</sup> Dozens of public engagement practices have been developed in the last fifteen years whose proponents assure that, when done well, enable citizens to have authentic and constructive deliberation as participants in public discussions, even on hotly contested matters.

#### 1. Deliberative Democracy: deepening democracy through Civil Discourse

Advocates of "deliberative democracy" contend that the public can improve the quality of democracy by questioning government and participation in governance processes.<sup>165</sup> Deliberative democracy is a communicative process based on reason, in which individuals are able to transform their

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163. See Bingham, *supra* note 161, at 297.

164. See, e.g., Philippe Koch, *Bringing power Back In: Collective and Distributive Forms of Power in Public Participation*, 50 URB. STUD. 2976, 2978–79 (2013) (raising the important question, whether the goal of such processes is to 'empower' citizens, or rather the 'social production' of decisional inputs and outcomes. Koch summarizes the literature, suggesting little empowerment occurs).

165. Salkin & Gottlieb, *supra* note 143, at 757.

individual perspectives and together reach decisions oriented to serve the public good.<sup>166</sup> Proponents of deliberative democracy emphasize that dialog and deliberation differ profoundly from debate. Debate is a duel of sorts; its participants strive to expose and exploit the weaknesses of opponents to overcome the other's argument. Dialog requires exchange of viewpoints, and deliberation entails the giving of reasons.<sup>167</sup> Processes of deliberation emphasize the importance of examining options and tradeoffs of various options for resolving the policy problem at hand.<sup>168</sup> Processes of dialog aim to increase understanding, to build sufficient interpersonal trust and openness to listening to others' very different perspectives.<sup>169</sup> Dialogic processes that build mutual understanding and relationships are, in this approach, often a crucial predicate to effective deliberation.<sup>170</sup>

Practitioners recognize there are similarities to dispute resolution processes like mediation and negotiation. Dialog and deliberation often are useful to groups facing conflicts or challenges that are shared by many, for example, poor race relations in a community, rather than a race-inflected dispute between neighbors.<sup>171</sup> A key distinction is that public engagement processes tend to focus as much or more on fostering change outside of the participants.<sup>172</sup> Among the purposes that are served by dialog and deliberation are: bridging divides; shifting the tone of public discussion about an issue "from vitriol to civil and solvable;"<sup>173</sup> generating innovative solutions to problems; reaching agreement on policy decisions; inspiring collective or individual action.<sup>174</sup>

Central features of decision-making methods include unbiased framing of the issue and options; creation of space for participants to weight all options;

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166. *Id.*

167. Lisa Blomgren Bingham, *Lawyers & Civil Public Discourse: A Process Map*, 18 DISP. RESOL. MAG., Winter 2012, at 7. Salkin & Gottlieb, *supra* note 143, at 757.

168. Salkin & Gottlieb, *supra* note 143, at 757.

169. Lisa Blomgren Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Public and Stakeholder Voice*, 2009 J. DISP. RESOL. 269, 278 (2009).

170. *Id.* at 278.

171. *Id.*

172. *Id.*

173. See NAT'L COAL. FOR DIALOGUE & DELIBERATION, <http://www.ncdd.org> (last visited Mar. 5, 2013). The phrase is courtesy of Sandy Heierbacher, who is Director of the National Coalition for Dialogue & Deliberation, a coalition of some 1500 organizations and practitioners "committed to bringing people together across divides to discuss, decide and act together on today's toughest issues." *Id.* See also Sandy Heierbacher, *Navigating the Range of Public Engagement Approaches*, 18 DISP. RESOL. MAG., Winter 2012, at 10 (providing a brief survey of the four main streams of engagement based upon primary purpose: exploration, conflict transformation, decision making, collaborative action).

174. Heierbacher, *supra* note 173, at 11.



and identifying the public's core values around an issue.<sup>175</sup> One topic common in the last few years is cities' budgets, where participatory budgeting allows community members a voice to influence their local budget by prioritizing local government spending and the allocation of public resources.<sup>176</sup> The method was first used in Porto Alegre, Brazil, and has since spread to other cities, and including a few in the United States. The process enhances government transparency, because public meetings take place over a period of time, and citizens are briefed on and empowered to discuss budget and policy proposals. Delegates are elected to represent each area of the city, and a municipal participatory budget council is elected to oversee and make final decisions. Once the participatory budget is approved, it goes before the local legislative body for final approval.<sup>177</sup>

## 2. Deepening Deliberation

The ideal of deliberative democracy is familiar, and features in political discourse across the ideological spectrum. But in practice, deliberation takes discipline. It does not necessarily follow from putting people together in a room. One nonpartisan center characterizes deliberation as turning on two "most basic requirements" of a healthy participatory democracy: a citizenry with the "knowledge and communicative skills" necessary for engaged democratic citizenship; and "a culture of vibrant, informed deliberation," in which members of the public discuss, give reasons, and reach collective decisions on matters of public importance.<sup>178</sup> Research suggests this is not how most Americans observe public discourse.<sup>179</sup> This is not the common description of public processes concerning land use decisions and development incentives.

A number of think tanks are exploring prerequisites and practices to deepen Americans' engagement skillset. For example, scholar and practitioner James S. Fishkin explains "deliberative polling" as designed to allow lay members of the public to participate in creating complex public policy. From the perspective that many members of the public vote despite being "unaware,

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175. *Id.* at 12.

176. Salkin & Gottlieb, *supra* note 143, at 761.

177. *Id.* at 762.

178. *The CDD Mission*, CTR. FOR DEMOCRATIC DELIBERATION, <http://cdd.la.psu.edu/> (last visited Mar. 5, 2014).

179. *See, e.g., Deliberating Across Differences*, CTR. FOR DEMOCRATIC DELIBERATION, <http://cdd.la.psu.edu/research/lectures-and-symposia/deliberating-across-differences> (last visited Mar. 5, 2014) (Announcing a lecture series to explore deliberation across difference, "Instead of reasoned debate, we now too often witness only polar disagreement. Instead of reflective deliberation, we see citizens angered or silenced by the sense that they have no voice. Instead of negotiation and compromise, we see our political leaders resorting to the politics of personal destruction.")

overwhelmed, and uninformed about the budgeting system of local governments,”<sup>180</sup> deliberative polling compensates for the “irrational, illogical and lackadaisical polling conducted by most institutions,”<sup>181</sup> and instead polls how the public would vote if they were well informed.<sup>182</sup> Essential aspects of deliberative polling are that voters are prepared with “carefully balanced briefing materials,” then engage in intensive discussions in small groups, and have the chance to “question competing experts and politicians.”<sup>183</sup> In the arena of public health in recent decades, health policymakers have increasingly turned to “citizens as analysts” to develop controversial and ethically fraught policies – such as planning for pandemics, health care funding, and health care delivery reform, which similarly engage members of the public in grappling with complex choices over policy and service priorities and expenditure.<sup>184</sup>

### 3. Collaborative Governance

Because public hearings afford no real dialog, they lack the elements necessary for a truly deliberative decision-making process. Public hearings are a poor form for the development of adequate information about complex community problems, do not promote a shared baseline of understanding, and do not even attempt to promote a consensus.

“Collaborative governance” appears in the literature as an umbrella term that encompasses many of the more robust formats with which local governments and democracy proponents are experimenting.<sup>185</sup> At least one scholar would define collaborative governance to include engaging the public, whether “in person or aided by technology,” in the policy process “through any method, model, or process including but not limited to public involvement, civic engagement, dialogue, public deliberation, deliberative democracy, public consultation, multi-stakeholder collaboration, collaborative public management, dispute resolution, negotiation, or other deliberative and consensual means.”<sup>186</sup>

One prevalent locale for attending to inclusion of minority persons’ views is the arena of environmental justice. Environmental law in particular has been

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180. Salkin & Gottlieb, *supra* note 143, at 771.

181. *Id.*

182. James S. Fishkin, *Deliberative Polling: Executive Summary*, CTR. FOR DELIBERATIVE DEMOCRACY, <http://cdd.stanford.edu/polls/docs/summary> (last visited Oct. 10, 2013). *See generally* JAMES S. FISHKIN, *WHEN THE PEOPLE SPEAK: DELIBERATIVE DEMOCRACY AND PUBLIC CONSULTATION* (2009).

183. Salkin & Gottlieb, *supra* note 143, at 772 (quoting JAMES S. FISHKIN, *THE VOICE OF THE PEOPLE: PUBLIC OPINION AND DEMOCRACY* 162 (1995)).

184. Julia Abelson, Mark E. Warren, & Pierre-Gerlier Forest, *The Future of Public Deliberation on Health Issues*, 42 *Hastings Ctr. Rep.*, Mar.-Apr. 2012, 27, 29.

185. *See supra* note 161 and accompanying text.

186. Blomgren, *supra* note 161, at 345.

reformed to retreat from the “announce and defend” method of agency decision-making by which governments make crucial decisions without involving the public, to require and expand the involvement of local groups. This shift toward “devolved collaboration” is marked by “seeking more participatory, local and holistic decision-making mechanisms.”<sup>187</sup> The collaborative governance model in environmental law is concerned with both distributional and procedural equity in environment and natural resource decisions.<sup>188</sup>

The movement toward devolved collaboration intersects with the movement for environmental justice, which recognizes that low-income and minority communities suffer disproportionately from exposure to “polluting facilities, congested roadways, lead paint, pesticides, and contaminated land,”<sup>189</sup> and also receive fewer land-based benefits such as access to parks, clean water, and waterfront resources, compared to wealthier and whiter sectors of the populations.<sup>190</sup> This distributional inequity is at the heart of environmental justice. Disenfranchised from administrative processes that govern the substantive decisions, and obtaining far fewer benefits yet more of the environmental burdens, as the distributional outcomes of the decision-making, these communities remain vulnerable, mirroring their larger social and political vulnerability and disadvantage.<sup>191</sup> The aim of environmental justice advocates is to equalize the influence of vulnerable communities in the decision-making, by leveling the procedural playing field: by involving them at the beginning, and providing them with technical and other resources to participate effectively.<sup>192</sup>

The paradigm shift in environmental regulation offers evidence that local residents in disenfranchised communities can work effectively in collaboration with other stakeholders, when the process is appropriately designed to fulfill the aspirations for public input and broad deliberation. An unsuccessful citizen committee process might operate “not as vehicle for public input, but as a wholly-owned subsidiary of county government,” and thus fail to provide “sufficient inclusion for those most directly affected” by the decision at

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187. Sheila Foster, *Environmental Justice in an Era of Devolved Collaboration*, 26 HARV. ENVTL. L. REV. 459, 461 (2002) (also noting that this paradigm shift is known by various names, including community-based environmental protection, civil environmentalism, collaborative stewardship).

188. *Id.* at 461.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* at 462.

hand.<sup>193</sup> But successful committees allow “active and engaged members” to take part in the process, educate themselves and be “educated by the [committee’s technical] consultants,” produce reports and recommendations, and give the community the feeling—and reality—of being “included.”<sup>194</sup>

Without such measures, Foster cautions, consensus decision-making processes can suffer from the same inequitable distribution of social power as do current processes – most often, along the lines of race and class.<sup>195</sup>

#### B. *Trending now: Public Engagement Professionals*

Public deliberation has exploded as a type of enhanced participation strategy, used by organizations in public, private and nonprofit sectors for addressing economic and political challenges in a landscape of shrinking resources and disputatious claimants. On the one hand, deliberative forms of public engagement appear to offer an appealing option within contemporary city politics for improving on the conventions and frustrations of local hearings concerning public approvals for TIFs and similar incentives for development projects. Public deliberation approaches offer a way to facilitate engagement with government agencies, by a broad array of interested members of the public.<sup>196</sup> Unlike organized protests or other forms of mobilization by impacted communities, public deliberation process looks like a neutral and open-ended form of engagement, in which the participants gather as democratic equals.<sup>197</sup> Such deliberations appear to be less hierarchical in operation, and in outcome, producing more responsive and flexible decision-making.<sup>198</sup>

However, the public deliberation may have little or no relationship to the decision-making. In the parlance of many practitioners in the field, the benefits of public deliberation process extend well beyond any effect on decisions or policy, because they function as “schools for democracy” by providing citizens with capacity-building experiences that help citizens see their participation as meaningful and worthwhile.<sup>199</sup> A further effect is that deliberative processes

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193. Luke W. Cole, *The Theory and Reality of Community-Based Environmental Decision-making: The Failure of California’s Tanner Act and Its Implications for Environmental Justice*, 25 *ECOLOGY L.Q.* 733, 743–44 (1999).

194. *Id.* at 740, 751.

195. Foster, *supra* note 187, at 490. See also Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992).

196. DELIBERATIVE DEMOCRACY CONSORTIUM, *THE DELIBERATIVE AGENCY: OPPORTUNITY TO DEEPEN PUBLIC PARTICIPATION* 6 (2004).

197. Foster, *supra* note 187, at 481.

198. Salkin & Gottlieb, *supra* note 143, at 759.

199. ARCHON FUNG & ERIK OLIN WRIGHT, *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 32 (2003).

tend to shift the frame from oppositional politics to interaction and collaboration among the contenders.<sup>200</sup>

An important critique emerging from some studies is the use of public deliberation practices as a preemptive strategy for reducing contention and public resistance to redevelopment and fiscal retrenchment.<sup>201</sup> A risk for under-represented communities could be the turn to public deliberation consultants who maximize the processes of deliberation over the inclusion of residents' inputs in the substantive city redevelopment decisions.

A self-described profession of public deliberation facilitators is growing like topsy as a field of practice. In the United States, two prominent professional associations claim over 1,000 members.<sup>202</sup> No specific academic degree or professional license or training is presently required to hold oneself out as a consultant or practitioner of deliberative democracy, and in a 2009 survey, members' reported backgrounds included organizational psychology, public relations, conflict resolution, community organizing, and therapy.<sup>203</sup>

Practitioners of deliberation consulting provide their services to governments and public agencies seeking to engage citizens, and also to corporations and non-profit sector organizations to engage employees, customers, community groups and similar stakeholders.<sup>204</sup>

Most scholarship to date has studied public-sector sponsors, like the public budgeting process in Porto Alegre, Brazil, or the Community Congresses created to provide to New Orleanians displaced to Texas by Hurricane Katrina,<sup>205</sup> a "collective opportunity to review and give final input on the draft Unified New Orleans Plan before it is sent to city leaders."<sup>206</sup> Caroline W. Lee and Zachary Romano determined that the three most common topics of deliberative processes were forms of management of resistance to austerity policies, arising from corporate reorganization, state retrenchment, and urban redevelopment.<sup>207</sup> Practitioners and a few scholars in the U.S. report, as do scholars in Europe and Australia, that the demand for deliberative

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200. *Id.*

201. Caroline W. Lee & Zachary Romano, *Democracy's New Discipline: Public Deliberation as Organizational Strategy*, 34 *ORG. STUDIES* 733, 743 (2013).

202. The International Association of Public Participation (IAP2), founded in 1990, and the National Coalition for Dialogue and Deliberation (NCD), founded 2002. *Id.* at 741.

203. *Id.*

204. *Id.* at 742.

205. *Id.*

206. *Id.* at 736 (citing UNIFIED NEW ORLEANS PLAN, PRELIMINARY REPORT: COMMUNITY CONGRESS III, at 1, New Orleans, LA (2007))

207. Lee & Romano, *supra* note 201, at 743.

“choicework” has risen noticeably in contexts of fiscal austerity, and public hostility over decisions as to economic development and growth.<sup>208</sup>

There appears to be some risk for grass-roots community residents, that when local governments contract with deliberation consultants in the interests of good governance, this may produce another top-down process of imposition by political elites, rather than deeper democracy. Certainly the problem is deserving of empirical analysis. In the United States and internationally, there is an increasing turn to the direct involvement of ordinary citizens in the initiation, formulation, implementation and assessment of outcomes of public policy and projects. Participation is often presented as an unalloyed good, as an antidote to heavy-handed bureaucracy, capture by moneyed and politically connected elites, declining social capital, and social exclusion.<sup>209</sup> As yet under-examined in the participation literature is the (perhaps naïve, or cavalier) assumption that participation will result in greater social justice. The question to study is whether the focus on participation process disregards consequences. What is citizen participation for? Who benefits from it?

#### IV. EXTENDING ARNSTEIN’S LADDER OF CITIZEN PARTICIPATION

##### A. *Arnstein’s Ladder*

Sherry Arnstein, writing in 1969 about citizen involvement in planning processes in the United States, described a typology of citizen participation, arranged as a ladder with increasing degrees of decision-making clout ranging from low to high.<sup>210</sup> The eight-rung ladder is admittedly a simplistic representation of complex dynamics, but it remains the seminal touchstone in analyses of public participation in local government decision-making, particularly for non-elite citizens, because it succinctly juxtaposes powerless citizens with power-holders.

##### 1. The Ladder 1.0

The Arnstein rungs ascend, from forms of “window-dressing participation,” through cursory information exchange, to the highest levels of partnership in or control of decision-making.

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208. *Id.* at 745. Lee and Romano recount ‘the business case’ made by deliberation practitioners to potential clients: along with “social profit” goals such as civic renewal, deliberation consultants advertise “improved relations and conflict reduction with resistant populations.” *Id.*

209. See Hilary Silver, Alan Scott & Yuri Kazepov, *Participation in Urban Contention and Deliberation*, 343 INT’L J. URB. REGIONAL RES. 453, 453 (2010).

210. Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INSTITUTE OF PLANNERS 216, 217 (1969).

The two bottom rungs of the ladder, (1) *Manipulation* and (2) *Therapy*, describe levels of "non-participation" that substitute for genuine participation. Community members are placed on rubberstamp advisory committees or advisory boards, the purpose of which is not to enable people to influence planning or programs, but to enable powerholders to "educate" or "cure" the participants.<sup>211</sup> Instead of genuine citizen participation, the bottom rungs of the ladder signify the distortion of participation into a public relations vehicle by the powerholders – "participation in participation,"<sup>212</sup> or the performance of civic hype.<sup>213</sup>

Rungs (3) *Informing* and (4) *Consultation* progress only so far, to achieve levels of "tokenism" that allow the have-nots limited roles, to hear and to have a limited voice in proceedings controlled by the power-holding officials. When these are proffered by powerholders as the extent of participation, citizens may indeed hear and speak, but with no reciprocal engagement nor assurance that the convening officials will listen, much less consider, the views expressed. When participation is restricted to these levels, there is no follow-through, no "muscle," with which to alter the status quo.

Rung (5) *Placation* is simply a higher level tokenism because the ground rules allow have-nots to advise, but retain for the powerholders the continued right to decide with impunity. In Arnstein's analysis, at this fifth level citizens begin to have some degree of influence, albeit tempered by tokenism. The placation strategy entails placing a few hand-picked have-nots on advisory and planning committees, and on public bodies like the housing authority. Customarily, the traditional power elite hold the majority of seats, and the have-nots can be easily outvoted as well as sidelined in discussion. In a limited sense, they allow citizens to advise or plan ad infinitum, but retain for powerholders the right to judge the legitimacy or feasibility of the advice. Placation results from the fundamental failure to define the rights and responsibilities of such advisory groups, and the boundaries between planning and decision-making.

At the top end of the ladder are levels of citizen power with increasing degrees of decision-making clout. Citizens might negotiate their way into a (6) *Partnership* that enables them to engage in trade-offs with traditional power holders. At the topmost rungs, (7) *Delegated Power* and (8) *Citizen Control*,

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211. *Id.* at 217.

212. *Id.* at 218 (noting the common and notably thin indicator of "engagement" is the use of sign-in sheets requiring names of attendees at public meetings, as evidence of public participation).

213. See DAVID WILCOX, COMMUNITY PARTICIPATION AND EMPOWERMENT: PUTTING THEORY INTO PRACTICE 2 (Aug. 1994), available at <http://www.jrf.org.uk/sites/files/jrf/h4.pdf>.

have-not citizens obtain the majority of decision-making seats, or full managerial power.<sup>214</sup>

a. From Window-Dressing to a Real Deal

Arnstein's paper demonstrated the view that, at least in urban redevelopment, "In most cases where power has come to be shared it was taken by the citizens, not given by the city." The rungs of the Ladder of Citizen Participation proceed from window-dressing to wresting real power from its usual wielders. With respect to *Consultation*, she observed that inviting citizens to state their opinions, like informing them, can be a legitimate step toward their full participation. But this rung may still be "sham" if consulting them is not combined with other modes of participation that assure that community concerns and ideas will be taken into account. When Arnstein was writing in 1969, frequent methods used for consulting people were attitude surveys, neighborhood meetings, and public hearings. Nearly fifty years later, these techniques are going digital, but otherwise are essentially unchanged.

"When powerholders restrict the input of citizens' ideas solely to this level, participation remains just a window-dressing ritual" in which people are useful to the process as statistical abstractions, and their participation is measured by how many come to meetings, take brochures home, or answer a questionnaire. What citizens achieve in all this activity is that they have "participated in participation." And what powerholders achieve is the evidence that they have gone through the required motions of involving and abstract public.

One classic misuse of the consultation rung is illuminated by a community meeting held to consult New Haven, Connecticut, citizens on a proposed federal grant.<sup>215</sup> At the large and testy turnout, members of The Hill Parents Association demanded to know why residents had not participated in drawing up the proposal.<sup>216</sup> The city official explained that it was merely a proposal seeking planning funds, and if funds were obtained, then residents would be deeply involved in the planning.<sup>217</sup> Although 300 residents were present, not a single representative of a Hill group moderated or even sat on the stage.<sup>218</sup> The city official described the meeting to the disbelieving crowd as an example of 'participation in planning.'<sup>219</sup>

In a dynamic repeated in cities throughout the United States, deep suspicion aroused at that and similar meetings, together with a long history of

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214. Arnstein, *supra* note 210, at 217.

215. *Id.* at 219.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*



comparable forms of "window-dressing participation,"<sup>220</sup> have poisoned the well for innumerable communities when city planners promise citizen participation.<sup>221</sup>

At the *Partnership* rung of the ladder, power is in fact redistributed through negotiation between citizens and powerholders. They agree to share planning and decision-making responsibilities through such structures as joint policy boards, planning committees and mechanisms for resolving impasses. After the ground rules have been established through some form of give-and-take, they are not subject to unilateral change.

Such a working partnership was negotiated by the residents in the Philadelphia model neighborhood. Like most applicants for a Model Cities grant, Philadelphia wrote its more than 400 page application and waved it at a hastily called meeting of community leaders.<sup>222</sup> When those present were asked for an endorsement, they angrily protested the city's failure to consult them on preparation of the extensive application.<sup>223</sup> A community spokesman threatened to mobilize a neighborhood protest against the application unless the city agreed to give the citizens a couple of weeks to review the application and recommend changes.<sup>224</sup> The officials agreed.<sup>225</sup> At their next meeting, citizens handed the city officials a substitute citizen participation section that changed the ground rules from a weak citizens' advisory role to a strong shared power agreement, and changed the city's description of the model neighborhood from a paternalistic description of problems to a realistic analysis of its strengths, weaknesses, and potentials.<sup>226</sup> Consequently, the proposed policy-making committee of the Philadelphia CDA was revamped to give five out of eleven seats to the residents' organization, and to grant the organization a subcontract, which paid citizen leaders \$7 per meeting for their

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220. Arnstein, *supra* note 210, at 220. The author notes that New Haven residents successfully demanded control of the program in the 1960s. *Id.*

221. *Id.* ("By way of contrast, it is useful to look at Denver where technicians learned that even the best intentioned among them are often unfamiliar with, and even insensitive to, the problems and aspirations of the poor. The technical director of the Model Cities program has described the way professional planners assumed that the residents, victimized by high-priced local storekeepers, 'badly needed consumer education.' The residents, on the other hand, pointed out that the local store-keepers performed a valuable function. Although they overcharged, they also gave credit, offered advice, and frequently were the only neighborhood place to cash welfare or salary checks. As a result of this consultation, technicians and residents agreed to change the plan to include the creation of needed credit institutions in the neighborhood, in lieu of a consumer education program.").

222. *Id.* at 222.

223. *Id.*

224. *Id.*

225. Arnstein, *supra* note 210, at 222.

226. *Id.*

planning services, and paid the salaries of a staff of community organizers, planners, and other technicians.<sup>227</sup>

At the remaining steps on the ladder, the pinnacle in Arnstein's formulation, citizens hold the significant cards to assure accountability of the program to them. Arnstein labelled these degrees of citizen control *Delegated Power* and *Community Control*.<sup>228</sup>

At the juncture of *Delegated Power*, negotiations between citizens and public officials can result in citizens achieving dominant decision-making authority over a particular plan or program, through a clear majority of seats and genuine enumerated powers. Although not the typical arrangement, this dominant decision-making role was attained by residents in a handful of Model Cities including St. Louis, Missouri; Dayton, and Columbus, Ohio; Minneapolis, Minnesota; Hartford and New Haven, Connecticut; Cambridge, Massachusetts; and Oakland, California.<sup>229</sup>

*Community Control*: A neighborhood corporation with no intermediaries between it and the source of funds is the paradigmatic model of control by the community, as the have-nots have pressed for the greatest degrees of power over their lives.

The ladder is an imperfect rendering. It has the punch and also the very real limitations common to convenient visual representations: it oversimplifies complex realities. For one, the hierarchical structure of the ladder as a heuristic device implies that more community control is always better than less control. Increased control may not always be desired by the community, and increased control without necessary supports (such as those secured in Arnstein's Philadelphia account) may produce what the community would regard as failure. Various arguments against community control are made: it is inconsistent with reliance on professional expertise;<sup>230</sup> it may encourage separatism and balkanization; it may enable new self-serving "hustlers" to be just as opportunistic and disdainful of the have-nots as their predecessors; it can turn out to be a new run-around for the have-nots by allowing them to gain control but not allowing them sufficient dollar resources to succeed.<sup>231</sup>

And yet, collective power *can* be produced through authentic participation, as Arnstein revealed. By contrast, window-dressing "participation" is likely to feed mistrust rather than belief in the legitimacy of the decisional process. Contemporary participatory practices offer insights for elaborating Arnstein's

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227. *Id.*

228. *Id.*

229. *Id.*

230. *See, e.g.,* Smith, *supra* note 37, at 244–46 (accounts of the planner's dilemma, as a professional with expertise, dealing with myopic members of the public).

231. Silver, Scott & Kazepov, *supra* note 209, at 472.

frank frame for the present era of fiscal retrenchment and the weakened condition of shrinking cities.

## 2. Re-Reading Arnstein's Ladder through Participation Theory

The theories of participatory democracy and public administration, discussed in Part III above, offer a number of principles and methods from which to fashion, not merely a toolbox of better public participation practices, but also a renewal of the essential compact between citizens and their government. Revisiting Arnstein's ladder in light of the contemporary movements for robust citizen engagement practices illuminates essential features along which to design and evaluate citizen engagement practices available for use when local governments engage in development decision making.

Too often, the very vagueness of the promises of "participation" gives rise to community disaffection. Many efforts that invite participation sow the seeds of discontent by failing to state clearly the level of participation invited or permitted. Local government agencies commit this error when they represent as active participation processes that are essentially passive, such as limited opportunities to comment to advisory bodies that make little response, with insufficient preparation in the form of advance notice, access to reports or experts. Better participation is likely to follow from better information and inclusion in the stages to follow, whereas opaque invitations are bound to produce disillusionment.

First and foremost, "citizen engagement" and "public participation" processes are amenable to, and merit, robust public-inclusive design. Three dimensions of participation design are useful for city-level redevelopment decisions: process *stage*, process *function*, and foundational *principles* for participation design. Not surprisingly given the rapid flourishing of the field, scholars' and practitioners' efforts to conceptualize participation practices vary. The literature has not evolved crisp categories of distinction between 'stages', 'functions' and intensities of participation. Each approach offers important guidance to those who would design enhanced procedures for public participation point in a process of citizen-government consultation. A 'stages' approach should guide process planners to think closely about the opportunities and impediments to engagement at each sequential stage. Attending to the functions of participation allow for transparency as to the nature of the opportunity, and allows community members to better determine how to marshal resources to participate effectively. Professor Archon Fung distinguishes five degrees of communicative and decisional participation: (1) Participants listen as spectators, (2) Participants listen and express preferences, (3) Participants develop preferences, (4) Participants aggregate and bargain

over priorities, and (5) Participants deliberate and negotiate over values and implementation.<sup>232</sup>

a. Stages of the Decision Process

The extensive citizen engagement literature demonstrates that the public can be constructively engaged at each *stage* of government policy- and project decision making. Four stages can be distinguished. The first of course is Initiation, when officials announce a proposed initiative. Subsequent stages can be identified as Preparation, Participation, and Continuation to Conclusion.

The dominance of the ‘public hearing’ method of public engagement, widely experienced as essentially one-way information delivery rather than authentic participation in decision-making, has perhaps obscured available subsequent stages for community engagement. An appropriate process should be designed to identify participation roles for the public at each of the four stages. The Public Participation Toolbox disseminated by the International Association for Public Participation provides guidance on dozens of tools and techniques for successive stages, including eighteen techniques for delivering information to the public, “public input” techniques for small groups and large groups, and “problem-solving” techniques.<sup>233</sup>

A number of practitioners identify “preparation” as an essential aid to effective public engagement.<sup>234</sup> A common strategy is to use some form of neutral brief in combination with workshop sessions, to provide sufficiently detailed information to engage the insights and perspectives of the public being consulted. A foundational insight is that citizen engagement does not happen unless thoughtful efforts are made to initiate the involvement of the public. The initiator ordinarily has significant power to control the extent of participation, and the level of transparency as to its contours.

To translate this insight into practice, at the initiation of the public engagement process, the initiating agency should state clearly the contours of the “public participation” opportunity. Planning and preparation that is adequate and inclusive in convening the participants, around a clearly stated purpose, is an obvious predicate to a meaningful process of engaging ordinary citizens. The initiators should state clearly, What is the goal of the participation

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232. Archon Fung, *Varieties of Participation in Complex Governance*, PUB. ADMIN. REV., Dec. 2006, at 66, 75, 78–79.

233. INTL. ASS’N. FOR PUB. PARTICIPATION, IAP2’S PUBLIC PARTICIPATION TOOLBOX (2006), available at [http://www.dvrpc.org/GetInvolved/PublicParticipation/pdf/IAP2\\_public\\_participationToolbox.pdf](http://www.dvrpc.org/GetInvolved/PublicParticipation/pdf/IAP2_public_participationToolbox.pdf)

234. See, e.g., NAT’L COAL. FOR DIALOGUE AND DELIBERATION, CORE PRINCIPLES FOR PUBLIC ENGAGEMENT 3 (2009), available at [http://ncdd.org/rc/wp-content/uploads/2010/08/PEP\\_final-expanded.pdf](http://ncdd.org/rc/wp-content/uploads/2010/08/PEP_final-expanded.pdf); CAROLYN J. LUKENMEYER ET AL., AMERICASPEAKS, ASSESSING PUBLIC PARTICIPATION IN AN OPEN GOVERNMENT ERA 62 (2011), available at <http://www.govexec.com/pdfs/082211jm1.pdf>.

process: To give information? To consult with citizens? To engage citizens in a sustained analysis? To collaborate in decision-making? The public participation process ought logically to be structured to achieve its functions.

b. Functions of Participation in the Decision Process

Functionally, when planning the citizen engagement practices to accompany redevelopment decision-making, participants' involvement may range along a spectrum of duration and intensity, requiring the commitment of increasing amounts of time and other resources. Members of the public may well have different preferences, if given the opportunity to choose, with some electing not to engage at more intensive levels requiring significant time or sustained study, deliberation, and interactive participation. These functions are:

1. Information Exchange: informing the community of what is proposed, the planning timeline and other parameters, inviting and receiving responses, and providing access to additional information;
2. Consultation: offering some options, soliciting and receiving feedback, although not necessarily inviting new ideas;
3. Deciding in collaboration: This function is distinguished from consultation because the invitees are encouraged to contribute additional options and new ideas, and to be offered opportunities for joint decision-making;
4. Joint Action to Implement: in which the participating stakeholders, include the public and the municipality, decide together what is best, forming a partnership to achieve it.

In the U.K, a fifth function has government adherents: Supporting individual community initiatives and within the framework decided upon, provide funding and support to local community organizations for complementary projects.<sup>235</sup> This reflects a major new national policy commitment without parallel in the United States nor in the U.S. participation-practice literature.

B. *Principles for Participation: From Arnstein's Ladder to a Spectrum of Citizen Engagement*

Today there are some 155 mandates in federal legislation requiring increased citizen engagement from the federal to the local level,<sup>236</sup> and in some quarters of federal and state government, renewed commitments to transparency and accountability have led to remarkable experimentation in

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235. See David Wilcox, *Community Participation and Empowerment: Putting Theory Into Practice*, 21 RRA Notes 78, 78–82 (1994), available at <http://pubs.iied.org/pdfs/G01549.pdf>.

236. Pradeep Chandra Kathi & Terry L. Cooper, *Democratizing the Administrative State: Connecting Neighborhood Councils and City Agencies*, 65 PUB. ADMIN. REV. 559, 562 (2005).

citizen engagement.<sup>237</sup> Yet when it comes to urban redevelopment, the present administrative law framework in many cities continues to burden the public with housing/planning agencies that are stuck on “participatory planning” from the 1970s. Agencies and authorities invite the community to visually stimulating charettes at preliminary stages of idea generation, but which do not lower the barriers to decisional participation. All power is held by the owner of the property, likely to be the housing authority or a public-private partnership.<sup>238</sup> This democracy-deficient approach yields predictable results: immediate and generous benefits for the developers; costs borne by taxpayers; promised benefits to the general public, inchoate and unrealized, and inequitably spread.

What people want instead of show and tell is greater economic justice, and a process better calculated to deliver public goods to all the public, rather than unjust enrichment to the favored few.<sup>239</sup> Arnstein’s contribution was to illumine the dynamics of power and exclusion of the people most affected by the development decisions being taken by their local governments. Her seminal work assumes the importance and persistence of distributive power arrangements. Arnstein’s attention to power and influence in the decisional circles highlights the crux of the participation dilemmas that afflict redevelopment decisions in our time: public meetings do not constitute “participation” unless the concerns, ideas and goals raised by participants have real potential to be translated into public policies.

Contemporary participation theorists and practitioners agree with Arnstein on three fundamentals: information sharing with the public, hearing from the public, and making extra effort to include those in “the public” historically excluded by reason of race and class.

#### 1. Information Practices

The starting gate for any citizen engagement process will be credible information-giving. Arnstein and others rightly observed that information giving and consultation are often wrongly presented as “participation.”<sup>240</sup> We are repeatedly reminded that this can lead to disillusionment among community interests. Yet information-giving is an essential predicate to building community engagement, and securing the commitment to expend time and energy to study and deliberate at deeper levels.

Arnstein’s ladder acknowledges that informing citizens of their rights, responsibilities, and options can be the most important first step toward

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237. See generally LUKENSMEYER ET AL., *supra* note 234.

238. Smith, *supra* note 37, at 245.

239. See CHI. BAR FOUND., 2007 INVESTING IN JUSTICE CAMPAIGN (2007), available at [http://jenner.com/system/assets/assets/3256/original/cbf\\_Brochure2.pdf?1319484398](http://jenner.com/system/assets/assets/3256/original/cbf_Brochure2.pdf?1319484398).

240. Arnstein, *supra* note 210, at 219.

legitimate citizen participation. Then, as now, however, innumerable public meetings emphasize a one-way flow of information from officials to citizens, with highly constrained channels for feedback and, most tellingly, no power for negotiation. Thin, pro forma techniques of participation<sup>241</sup> feature officials or their experts who deliver information without an aim or duty to cultivate deeper levels of knowledge among citizens of the issues at hand, or to elicit new knowledge from the public in attendance. Where these conditions pertain and, as is common, when information is provided at a late stage in planning, people rightly perceive that their opportunity to influence the program is next to nil.

## 2. Public Input – from Window-Dressing to Consultation and Collaboration

The deliberative democracy practitioners proffer numerous techniques for small and large groups to work together on public policies and local problem solving. These are designed to improve upon the conventional style of public hearings. Typically a single public hearing meets legal requirements, but utterly fails as engagement. First, because hearings entail one-way speech: members of the public speak to the decision-making body. That body need not respond during the hearing, nor generally account for its actions in light of the commentary received, at a later point. Secondly, the method is overly vertical, and insufficiently horizontal: the format frowns upon discussion around the room, thus the members of the public have no opportunity to engage with each other either. Consequently, the structure of the conventional public hearing precludes engagement among those present and evades collaborative investigation of alternatives to decisions presented by the authorities. Failure to move from the old to a new paradigm is to misread the community demand—to hear and fear “control” rather than to move into “engagement.”

Two additional modes of consultation are the task force and advisory committee. The premise of each, through the deliberative-democracy lens, is that representatives of diverse stakeholder groups will work together, gather and consider information, and come to appreciate others’ perspectives in reaching proposed solutions. Compare citizen juries, in which small groups of ordinary citizens are impaneled to learn about an issue, examine witnesses, make a (non-binding) recommendation. All three devices are labor- and time-intensive for the participants. Participation theory and practice-advocates stress that, for any of these formats to accomplish community engagement, thoughtful attention must be paid to the representativeness of the community

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241. LUKENSMEYER & TORRES, *supra* note 16, at 7.

members chosen to serve in these capacities, as essential to the credibility of the process and acceptance in the neighborhoods.<sup>242</sup>

### 3. Inclusiveness

Inclusion to address the needs/concerns of the poorest and most disadvantaged means identifying those who are usually voiceless, or deliberately excluded, and building with them a process of trust and empowerment that allows them to see themselves as citizens, to feel entitled to a voice, to find the confidence to speak and the means of participating.

The benefits of intentional attentive inclusion are fairer and more just decision making, accurate targeting of funds (which can save money), stronger community spirit and reduction of the effects of poverty and exclusion on individuals, families and communities.<sup>243</sup>

The existing legal framework for robust community participation is underdeveloped to take account of these distributional differences. Potential is evident to provide more clear authority for dialogic community engagement processes.

### 4. Principles of Practice for Public Engagement

For communities intent on securing a more robust set of commitments from their local officials in allocating public goods and public dollars, several take-aways can be drawn from the wide interest in enhancing citizen engagement generally, and critical literature concerning public participation in local governance specifically. The principles enumerated below update Arnstein's insistence that meetings conducted to impart information are information sessions; they are not "participation." To promote substantial participation, beyond unilateral information-giving, the design of the process for input that is appropriate to the development of concept, plan and implementation of city policies and projects, the following 'design principles' should be incorporated. These principles emphasize the importance of planning and preparation that is "adequate and inclusive in convening the participants;" inclusion of broad diversity as to demographics, voices, ideas and information; collaboration "to advance the common good;" reciprocal listening and openness; transparency and trust – emphasizing clarity of explanation, and a public record of sponsors, outcomes, and the range of views and ideas

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242. *See supra* Part III.A.3.

243. Some localities are genuinely desirous to deepen community engagement with policy and programs, as evidenced in various handbooks and protocols in California. Evidenced also in part by uptake in using websites, and digital technology. Not all inclusive: online comments and grant applications; sloppiness re due-process qualities of notice—posting dates and times of 'public meetings' online are not well-calculated to inform—come-to-the mountain methods, antithetical.



expressed; real potential for the participatory activity to have impact on the ultimate action.<sup>244</sup>

These six principles afford great flexibility as to the particulars of practice. A suitable participatory process for redevelopment decision-making can incorporate these principles, and also take account of key differences among participants. Certain elements of power are differentially distributed -- some actors have more resources of time, money, personnel, the capacity to hire expertise, political access and influence. Participants may include, in addition to elected representatives and experts from relevant public agencies, members of the general public, lay and professional stakeholders, and community members who have self-selected, or been recruited or selected by others in the process. They will arrive with varying degrees and types of authority. Public engagement in redevelopment decision-making should acknowledge these background conditions but ought not perpetuate them. Reading Arnstein's Ladder through the participation developments in the past forty-five years yields eight core design principles for meaningful community participation.

Meaningful community participation process should be:

1. *Purposeful*: design the process sincerely for the purpose of eliciting public views and ideas to help shape the public decisions.
2. *Timely*: begin public participation early, as an integral aspect of identifying issues and opportunities in the concept, design and implementation of local redevelopment policies and projects.
3. *Transparent*: The public participation process must be "open, honest and understandable." This requires clarity at the outset as to the purpose and design of the process, identity of the decision-makers, and how decision makers will use the results of the public engagement process.
4. *Inclusive and Equitable*: an adequate participation process must identify and affirmatively reach out to the members of the affected communities in all of their diversity. This is necessary to engage 'the community' and its full range of views, experiences and knowledge. It is particularly important to assure the inclusion of members of communities historically burdened by mal-distributed environmental and economic siting decisions. The principle applies as well to overcome historical exclusion of racial and ethnic and other social groups in land use decision-making. Equally necessary, the impacts of proposed project, including its costs, burdens and benefits, must be fairly identified, and equitably distributed.

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244. NCDD propounds a seventh principal as well, to promote a culture of sustained engagement and participation. NAT'L COAL. FOR DIALOGUE AND DELIBERATION, *supra* note 234.

5. *Informed*: Members of the public must receive the information they need to participate effectively, with enough lead time to do so. Participants in the process have the information they need, and access to experts, consistent with their role in the deliberation and decision making process.
6. *Accessible*: the public participation process must be broadly accessible in terms of time, location, and language, and accessible to individuals who have disabilities.
7. *Appropriate Structure*: the process utilizes one or more of the engagement formats, in a manner that is responsive to the needs of the affected communities identified for participation, so as to encourage full, equitable and effective engagement.
8. *Accountable to Participants and Public*: the process documents the community members' ideas, preferences, and recommendations; they are given consideration by decision-makers; the local officials communicate decisions back to all the process participants and to the broader public; and in so doing, provide a description of how the public input was considered and used.

#### 5. What Citizens and City Officials Can Do Now

On the public citizenship side of the equation, community members need to know what more to demand from the public participation their city leaders establish. Legal requirements of citizen participation form a floor, not a ceiling; and some governments or agencies may be willing to specify the requirement and encourage 'more' than the minimum. The opportunity to forge an agreement, project by project, town-by-town, in the form of an ordinance or other compact, is worth pursuing with vigor.<sup>245</sup>

In the meantime, communities and their coalitions can learn and practice more robust forms for engaging their elected officials and planning agencies.

Citizens can:

1. Insist that government bear responsibility to co-design with communities, and to deliver, robust public participation rights and opportunities. Your government should not be permitted to merely contract it out to consultants (although, some consultants may help to develop knowledge, skills and experiences that local governments may presently lack).

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245. CITE L's proposed public participation ordinance here. ALICE? THIS ONE MISSED BY AUTHOR, WILL FIX AFTER MACROING

2. Tell your government what you need to engage effectively: More and better information, better notice and a longer response time, better scheduling, access to the consultants, delegates in the decisions. Look outside your own city for more robust models.

Better communication of information is the low-hanging fruit. Community residents commonly want more and better information sooner. A useful graph prepared by the International Association for Public Participation distills the merits and deficiencies of ten “passive” techniques for distributing information to the public, and ten “active” public information techniques. Passive methods include public meeting handouts, press releases, repositories of reports (such as public libraries, and city department websites), news conferences and television. Active techniques include designation of an information officer, establishment of an information center, regular briefings before community organizations’ meetings, providing access to technical assistance to individuals and organizations, and simulation games.<sup>246</sup>

3. Search out resources for community engagement. *See, e.g.*, [http://www.citizenshandbook.org/participation\\_toolbox.pdf](http://www.citizenshandbook.org/participation_toolbox.pdf).
4. Consider a public participation statute, as a means by which to rewrite the covenant between citizen and government to incorporate the foregoing Design Principles.

Civic leaders can:

1. Develop engagement commitment, imagination, and competence. This should at a minimum be akin to the investments cities have been making in their web presence. Innumerable cities are now hiring data deacons and IT gurus to put more government databases online and accessible to the public, often in the stated pursuit of transparency and to aid an informed citizenry. Insufficiently understood or examined, however, is the role of these initiatives to deepens the digital divide and fails to engage poorer, less resourced communities of laboring people and harried parents who do not spend the workday in front of computers or wield 4G smartphones with expensive data plans. In short, city officials owe duties to all their citizens, and thus must take public engagement as seriously as “e-government.”<sup>247</sup>
2. Make government decisions and public data transparent. Examples of community-information system assessment are detailed in a recent report by the Knight Foundation, see Lee Rainie et al., *How the Public Perceives*

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246. *See* INTL. ASS’N. FOR PUB. PARTICIPATION, *supra* note 233.

247. AM. SOC’Y FOR PUB. ADMIN. & UNITED NATIONS DIV. FOR PUB. ECON. AND PUB. ADMIN., *BENCHMARKING E-GOVERNMENT: A GLOBAL PERSPECTIVE* (2002), *available at* <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan021547.pdf>.

Community Information Systems (March 1, 2011), available at [http://www.pewinternet.org/~media/Files/Reports/2011/Pew\\_Monitor\\_Communityinfo.pdf](http://www.pewinternet.org/~media/Files/Reports/2011/Pew_Monitor_Communityinfo.pdf).

#### CONCLUSION: TOWARD DEVELOPMENT JUSTICE

The problems of urban redevelopment raises difficult questions of local government taxing and spending powers, market economics, and justice. The economic and development-incentive dimensions play significant roles in public debate, and have been analyzed extensively.<sup>248</sup> By contrast, the question of development justice, also of great importance, has received little sustained attention in the American legal academy.<sup>249</sup> That gap has not impeded citizens from coalescing into local ‘fair development’ campaigns in Baltimore, Biloxi, Chicago, and more.<sup>250</sup>

The prevention of unfair cost shifts to burdened communities, and the prescription to increase the community responsiveness of development, are twin themes in the literature critical of modern urban renewal. These were also foundational claims of environmental justice leading to the present-day extensive legal framework.<sup>251</sup> As one commentator explained: “Public officials and private industry have responded to the ‘NIMBY’ principle with the ‘PIBBY’ principle: ‘put in blacks’ back yard.’”<sup>252</sup>

Principles of justice might seem to require taking greater care to prevent predictable harms to those uprooted by redevelopment. Principles of corrective justice raise issues of unjust enrichment and disgorgement of unearned gains—

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248. See *supra* footnotes 118–121 and accompanying text.

249. See Cummings, *supra* note 78, at 307.

250. For examples of equitable development as a field of practice, see *Projects*, PRATT CTR. FOR CMTY. DEV., <http://prattcenter.net/tags/equitable-development> (last visited Mar. 5, 2014); RICHMOND EQUITABLE DEV. INITIATIVE, <http://urbanhabitat.org/richmond> (last visited Mar. 5, 2014). REDI has developed a scorecard for use in evaluating local development practices, whose core measures include “Development that results in a healthy local environment and strong quality of life for all” and “Engagement of those most directly impacted- such as low-income people, people of color, immigrants, churches, and unions- at every stage of the development process.” See REDI EQUITABLE DEVELOPMENT FRAMEWORK AND PRINCIPLES, RICHMOND EQUITABLE DEV. INITIATIVE, available at [http://urbanhabitat.org/files/REDI\\_Framework\\_Principles.pdf](http://urbanhabitat.org/files/REDI_Framework_Principles.pdf) (last visited Oct. 20, 2013). Coalitions have formed in several cities to advocate for equitable development, often stating the substantive and inclusionary principles of their platforms. See, e.g., PUGET SOUND REG’L EQUITY NETWORK: PRINCIPLES FOR EQUITABLE DEVELOPMENT, available at <http://be.futurewise.org/images/Equity%20Principles%20FINAL%20DRAFT%208-30-12.pdf> (last visited Mar. 5, 2014) (incorporating goals to prevent displacement, advance economic opportunity, and to “practice meaningful community engagement”).

251. Douglas A. McWilliams, Environmental Justice and Industrial Redevelopment: Economic and Equality in Urban Revitalization, 21 *ECOLOGY L.Q.* 705, 727 (1994).

252. *Id.* at 759.

clawback principles in some development incentive laws—and imposition of constructive trust or other equitable mechanisms to recapture public subsidy.

Questions of corrective justice are intertwined with questions of distributive justice. The recipients of governmental development incentives are profitable private companies operated to maximize return to their owners, whose net worth is several times that of most residents in the low-wealth minority and working-class communities where much urban redevelopment occurs. Indeed, a significant factor in planning for redevelopment is to minimize the costs of land assembly. Not only do poor people's homes cost less to purchase or condemn, but residents in poor communities are recognized to have less political clout to be consulted in advance, or the means to timely identify the signs and portents of planners, or the wherewithal to mount effective resistance and advocacy in city hall, to undo the already-done deals forged in public/private development partnerships. Consequently, poor neighborhoods targeted for removal and redevelopment are required to bear the burden of development. In a frame of market economics, it might be argued that this is an unexceptional outcome of the simple fact that poor peoples' land is cheaper – financially, and economically.

But to accept that argument is to allow a view of market economics to supersede all of our political commitments to government by law, and to laws designed to provide justice for all.

These are large questions, and I do not purport to offer complete answers. My goal here is narrower, to consider that, when we persist in the regnant urban redevelopment model, we allow government to aid social and economic elites to harm people in communities already comparatively disenfranchised and disproportionately burdened by local development decisions. Government—which fundamentally is constituted to seek the general welfare of *all* the people—should refrain from authorizing the harm without an appropriate remedy. These are substantive justice questions requiring commitments in addition to participation procedures.

Political leaders, urban planners, and sociologists commonly recognize that 'renewal' could be beneficial to children and adults stuck in places of poverty. Poor neighborhoods are not only physically disinvested and declining. Policy and law have ensnared the residents as well. If, as recent research reveals, one's zip code is highly correlated to one's life chances—of school success, health and flourishing talents—then city powers that construct this geography of diminished life chances should be redirected, to assure a modicum of these public goods to every neighborhood.<sup>253</sup>

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253. See SHARKEY, *supra* note 89, at 97. For arguments as to intergeneration equity, see generally *Symposium on Intergenerational Equity and Discounting*, 74 U. CHI. L. REV. 1 (2007).